CITY OF NEWPORT BEACH
HARBOR COMMISSION STAFF REPORT

Agenda Item No. 1
October 14, 2009

TO: HARBOR COMMISSION

FROM: Harbor Resources Division
Chris Miller, Harbor Resources Manager
(949) 644-3043, cmiller@newportbeachca.gov

SUBJECT: Appeal the Harbor Permit / Approval in Concept for the AERIE Dock Structure at 201-207 Carnation Avenue

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ISSUE

Should the Harbor Commission affirm, modify or reverse the decision of the Harbor Resources Manager who approved the Harbor Permit / Approval in Concept of the AERIE dock structure?

RECOMMENDATION

The Harbor Commission may choose one of the following actions:

1. Affirm the decision of the Harbor Resources Manager who approved the Harbor Permit / Approval in Concept of the AERIE dock structure; or

2. Modify the decision of the Harbor Resources Manager; or

3. Reverse the decision of the Harbor Resources Manager.

DISCUSSION

On July 8, 2009, the Harbor Commission considered the AERIE project which includes eight (8) slips and one (1) guest side tie to accommodate eight (8) new residential units proposed for the property. The Commission reviewed the project along with the Special Conditions (Exhibit 1). These conditions covered construction activity, noise, and providing minimal impact to the adjacent cove, as well as various other conditions of use with the dock system, including a beam limit restriction for vessels berthed at the bayward-most side tie. The Harbor Commission then provided comments which were forwarded to the City Council who certified the Environmental Impact Report (EIR) as being adequate on July 14, 2009.

On July 31, 2009, Harbor Resources issued a Harbor Permit / Approval in Concept with Special Conditions for the dock system, and on August 13, 2009, the project opponents appealed the issuance of this Harbor Permit.

The appeal questions the adequacy of the Environmental Impact Report and references comments submitted to the City in a letter dated May 4, 2009, by Coast Law Group (Exhibit 2).

City Staff and the City's environmental consultant prepared written responses to these comments (Exhibit 3) in accordance with the California Environmental Quality Act. These comments and responses were considered by both the Planning Commission and City Council prior to the Council's determination to certify the EIR as being adequate on July 14, 2009. In summary, environmental and policy issues highlighted in the appeal related to the proposed dock structures have been addressed to the City Council's satisfaction and adequate mitigation for potential impacts to the marine and boating environment are provided. These measures have been applied to the Harbor Permit / Approval in Concept through the Special Conditions to further ensure avoidance and mitigation of potential impacts.

The Harbor Commission may only consider the material previously submitted and discussed at prior Harbor Commission meetings (Exhibit 5). For reference, the EIR is posted at: http://www.newportbeachca.gov/index.aspx?page=692

APPEAL PROCEDURES

Section 17.65.040 of the City's Municipal Code states:

A. Hearing Date. An appeal shall be scheduled for a hearing before the appellate body within thirty (30) days of the filing of the appeal unless both applicant and appellant body consent to a later date.

B. Notice and Public Hearing. An appeal hearing shall be a public hearing if the decision being appealed required a public hearing. Notice of public hearings shall be given in the manner required for the decision being appealed.

C. Plans and Materials. At an appeal hearing, the appellate body shall consider only the same application, plans and project related materials that were the subject of the original decision.

D. Hearing. At the hearing, the appellate body shall review the record of the decision and hear testimony of the appellant, the applicant and any other interested party.

E. Required Findings. At an appeal hearing, the appellate body shall make the findings prescribed in the individual chapters of this Code when affirming, modifying or reversing the original decision.

F. Decision and Notice. After the hearing, the appellate (or reviewing body) shall affirm, modify or reverse the original decision. When a decision is modified or reversed, the appellate (or reviewing) body shall state the specific reasons for modification or reversal. Decisions on appeals shall be rendered within thirty (30) days of the close of the hearing. The Harbor Resources Manager shall mail notice of a Harbor Commission decision and the City Clerk shall mail a notice of a City Council decision. Such notice shall be mailed within five working days after the date of the decision to the applicant and the appellant.

PUBLIC NOTICE

This meeting has been publicly noticed via a mailer (to the residents and occupants within a 310' radius of the project) along with a jobsite posting on August 27, 2009. It was also posted on the City's website on September 11, 2009 (Exhibit 4). This appeal was originally noticed for the September 16, 2009 Harbor Commission meeting, but the applicant requested the appeal be continued until the date certain Harbor Commission meeting on October 14, 2009. The Commission unanimously approved this request via a motion on September 16, 2009.

This agenda item has been noticed according to the Ralph M Brown Act (72 hours in advance of the public meetings at which the Harbor Commission considers the item). It was also posted on the City's website.

ENVIRONMENTAL REVIEW

An EIR (SCH# 2007021054) has been prepared for the entire project which includes both landside and harbor improvements. The City Council made the final determination as to the adequacy of the EIR on July 14, 2009, and Harbor Resources staff issued a Harbor Permit / Approval in Concept with Special Conditions for the dock portion of the project.

Prepared by:

_____
Chris Miller
Harbor Resources Manager

Attachments:	Exhibit 1:	Harbor Permit / Approval in Concept with Special Conditions
	Exhibit 2:	Appeal
	Exhibit 3:	Written Response to Appeal Comments
	Exhibit 4:	Public Notice
	Exhibit 5:	Previous Harbor Commission Staff Reports (April 8, July 8 and September 16 2009)

Exhibit 1

Harbor Permit / Approval in Concept with Special Conditions

HARBOR RESOURCES ACTION LETTER

HARBOR RESOURCES
829 HARBOR ISLAND DR
NEWPORT BEACH, CA 92660
(949) 644-3034 FAX (949) 723-0589

Action:	Approval in Concept / Pier Permit
Approval Date:	July 31, 2009
Pier Permit Number:	105-201
Applicant:	Advanced Real Estate Services, Inc. Mr. Richard Julian
Site Address:	201-207 Carnation Avenue
Legal Description:	

On July 31, 2009, the Harbor Resources Manager approved the following:

Eight (8) replacement slips and one (1) guest side tie dock are requested for the eight (8) new residential units proposed. The new dock layout is located between the existing Pierhead Line and the natural rock outcroppings, with special attention to the existing eelgrass bed on the southern side of the property. The new docks will be composed of timber supported by rotationally molded plastic pontoons which require less draft (bottom clearance) than concrete floats, allowing the dock system to be located as close to the rock outcropping as possible. This layout will accommodate boats up to 100-feet in length.

The current six (6) steel dock guide piles that support the existing docks will be replaced with 19 new guide piles supporting the new dock system. Of these 19 piles, nine (9) will be larger diameter piles (approx. 2-foot diameter) to support the long, outside, bayward-most side-tie float. All guide piles will be pre-stressed concrete piles set in pre-drilled holes.

The existing 20-foot long gangway will be replaced by a 44-foot gangway. The pile-supported pier walkway between the existing gangway platform and the existing concrete pad will be repaired / replaced with a structure in-like-kind (timber-framing system, a 2x timber deck, and timber railings all around). The existing concrete piles supporting the walkway will be repaired in the form of concrete repairs. The gangway platform construction will include the repair and replacement of four (4) steel piles, timber framing with metal connectors, and a 2x timber deck with railings all around. The existing concrete pad, concrete steps, and safety railings will be repaired and patched as necessary.

The Harbor Resources Manager's approval is subject to the attached conditions.

Appeal Period

The Harbor Resources Manager's decision may be appealed to the Harbor Commission within 14 (fourteen) days of the approval date via a written request addressed to Harbor Resources. For additional information on filing an appeal, contact Harbor Resources at (949) 644-3034.

By: _____
Chris Miller, Harbor Resources Manager

Attachments: Supporting Documents

HARBOR RESOURCES DIVISION
829 Harbor Island Drive
Newport Beach, CA 92660
(949) 644-3034 / Fax (949) 723-0589

APPROVAL IN CONCEPT

APPROVAL IN CONCEPT BY THE CITY OF NEWPORT BEACH as required for permit application to the South Coast Regional Commission pursuant to California Administrative Code, Sections 13210 and 13211.

General Description of Proposed Development: Remove existing dock structure. Construct 8 slips and 1 guest side tie for 8 new residential slips. Remove and replace gangway with 44' gangway. Various repairs to the supporting walkway, pier platform and support piles. See the Action Letter for a full project description.
County Encroachment Permit required because docks are over County Tidelands.
Address number must be stenciled on at least 1 bayward facing pile.
Pier conditions must be signed by applicant prior to final approval.

Property Address: 201-207 Carnation Ave.

Legal Description:

Harbor Permit Number: 105-201

Plan Check Number: TBD

Applicant: Advanced Real Estate Services, Inc., Richard Julian

Applicant's Mailing Address: 23792 Rockfield Blvd., STE 100, Lake Forest, CA 92630

Phone Number: (949) 595-5900

I have reviewed the plans for the foregoing development including:

1. The general site plan, including any roads and public access to the shoreline.
2. The grading plan, if any.
3. The general uses and intensity of use proposed for each part of the area covered in the application.

And find

☒ They comply with the current adopted Newport Beach General Plan, Municipal Code, Title 17 and any applicable specific or precise plans or,

☐ That a variance of exception has been approved and final.

A copy of any variance, exception, conditional use permit or other issued permit is attached together with all conditions of approval and all approved plans including approved tentative tract maps. On the basis of this finding, these plans are approved in concept and said approval has been written upon said plans, signed and dated.

Should Newport Beach adopt an ordinance deleting, amending or adding to the Municipal Code or other regulations in any manner that would affect the use of the property or the design of a project located thereon, this Approval In Concept shall become null and void as of the effective date of this said ordinance.

In accordance with the California Environmental Quality Act or 1970, and state and local guidelines adopted thereunder, this development:

☐ Has been determined to be ministerial or categorically exempt.

☐ Has received a final Exemption Declaration or final Negative Declaration (copy attached).

☒ Has received a Final Environmental Impact Report (copy attached).

All discretionary approvals legally required of Newport Beach prior to issuance of a harbor permit and a building permit have been given and are final. The development is not subject to rejection in principal by Newport Beach unless a substantial change is proposed.

This concept approval in no way excuses the applicant from complying with all applicable policies, ordinances, codes and regulations of Newport Beach. **See attached Special Conditions.**

Chris Miller, Harbor Resources Manager

July 31, 2009

Attachments:
Worksheet for Building Permit Application
Drawing
Pier Conditions

HARBOR RESOURCES DIVISION
829 Harbor Island Drive
Newport Beach, CA 92660
(949) 644-3034 / Fax (949) 723-0589

Special Conditions

July 31, 2009

Property Address: 201-207 Carnation Ave.

With reference to the plans currently under consideration at the above referenced address to reconfigure or modify the dock system or bulkhead, the following conditions will now be in effect:

1. The project proponent is aware of the Harbor Permit Policies (Council Policy H-1) and Title 17 of the City of Newport Beach Municipal Code. The project proponent understands that the above referenced structure(s) is under the purview of these Policies and Codes.
2. Any future work on the above mentioned structure(s) requires permits with the City of Newport Beach and any other applicable agencies. Painting and work considered to be cosmetic in nature does not require a permit.
3. The conditions set forth in this document pertain to the proposed dock system and/or bulkhead under consideration. Any future modifications or alterations to the dock system and/or bulkhead may require new conditions which may override or change these conditions. These conditions supersede all past conditions associated with this property.
4. Only marine oriented uses are allowed on the pier, pier platform, gangway and float. Patio furniture, plants etc...are not permitted.
5. In accordance with Municipal Code 10.08.030 A. the project proponent shall obtain the proper permits for equipment and materials storage. "Except as otherwise provided in this section, no person shall use any public street, sidewalk, alley or parkway or other public property for the purpose of storing or displaying any equipment, materials or merchandise, or any other commercial purpose. B. Public streets, sidewalks, alleys, or parkways may be used for the purpose of selling, storing, or displaying any equipment, material, merchandise or for other commercial purposes in the following cases: ...For the temporary storage of construction equipment or material provided a permit is issued pursuant to Chapter 12.62 of this Code and the storage is consistent with provisions of the Uniform Building Code."
6. The project shall be implemented in conformance with the Local Coastal Program - Coastal Land Use Plan.
7. In accordance with Municipal Code 10.28.040 the following noise regulations apply: "A. Weekdays and Saturdays. No person shall, while engaged in construction, remodeling, digging, grading, demolition, painting, plastering or any other related building activity, operate any tool, equipment or machine in a manner which produces loud noise that disturbs, or could disturb, a person of normal sensitivity who works or resides in the vicinity, on any weekday except between the hours of seven a.m. and six-thirty p.m., nor on any Saturday except between the hours of eight a.m. and six p.m. B. Sundays and Holidays. No person shall, while engaged in construction, remodeling, digging, grading, demolition, painting, plastering or any other related building activity, operate any tool, equipment or machine in a manner which produces loud noise that disturbs, or could disturb, a person of normal sensitivity who works or resides in the vicinity, on any Sunday or any federal holiday."

8. The contractor shall post and update a two week schedule of construction activities at a location(s) easily accessible to local residents.

9. Eelgrass beds have been found adjacent to the project area and shall be protected per the "Southern California Eelgrass Mitigation Policy" prepared and managed by NOAA/ National Marine Fisheries Service.

10. During construction, disturbance of the adjacent beach shall be minimized. Construction materials and equipment shall not be placed on the beach. The beach's sand dollar habitat shall be protected during construction. The project applicant shall submit a Beach Protection Plan to the Harbor Resources Manager for approval prior to start of construction. In addition, the Beach Protection Plan shall include Best Management Practices for protecting the beach after the project is complete.

11. The project applicant and its successors are notified that even though the proposed dock system replaces an existing dock system, the new docks will be constructed in the Entrance Channel to Newport Bay which is subject to surge and swell activity which may cause damage to the dock system and vessels berthed therein. It is the responsibility of the project applicant and its successors to maintain and operate the dock system to minimize damage to the dock system and vessels. The dock system shall be subject to nuisance abatement per Title 17 of the Municipal Code, if in the opinion of the Harbor Resources Manager, it presents an endangerment to other facilities or vessels in the harbor.

12. The project applicant must remove the existing dock system including the gangway and pier within 90 days of receiving all final regulatory permits allowing the construction of the replacement dock system.

13. The vessels that will be side-tied to the outside, bayward-most float which is positioned on the Pierhead Line, shall not extend into the harbor more than 24 feet from the edge of this outside, bayward-most float. This is shown on the approved drawings as the "Vessel Width Limit Line." The vessels side tied at this location shall be safely secured to withstand various weather and ocean/bay conditions. The applicant shall also submit an Inclement Weather Action Plan to the Harbor Resources Manager that describes detailed preventative measures that will be taken with respect to the vessels during storm conditions.

14. The guest side-tie on the north end of the dock system shall only be available for vessels less than or equal to 30 feet in length. This side tie shall be used for guest berthing only and will not be used for any permanent, long term vessel storage, and will not be rented or leased.

15. The number of boat slips and side ties (as described in #13 and #14 above) approved in the final design must be the same as the number of dwelling units approved by the City Council in the final project approval.

16. The side property lines extend in the water along their same bearings. Vessels shall not encroach upon the neighbor's property on either side.

17. The slips and side ties are only available for AERIE owner's use, except for the guest side tie. They are not to be used by anyone else, whether by rental, lease or loan or any other measure. Every calendar year, the applicant shall provide the Harbor Resources Manager with a list that demonstrates that the AERIE homeowners are owners of their corresponding vessels.

18. The applicant will comply with the conditions and mitigation measures applicable to the dock/pier construction portion of the project as provided in Council Resolution No. 2009-52.

Chris Miller, Harbor Resources Manager

Applicant Signature Print Name Date

Exhibit 2
Appeal

Revised Letter of Appeal -

August 13, 2009

Chris Miller
City of Newport Beach
Harbor Resources
829 Harbor Island Drive
Newport Beach, CA 92660

RE: 201-207 Carnation Avenue

Dear Mr. Miller,

We recently received your Harbor Resources Action Letter regarding the Approval in Concept/Pier Permit for the Aerie project's proposed marina, dated July 31, 2009. We are appealing your decision to the Harbor Commission for many reasons, but specifically for the approval of a DEIR that is legally deficient and the resulting violations under the California Environmental Quality Act (CEQA). The project also violates the City's own CLUP policies, the Coastal Act, and California Trust Doctrine.

Per the appeal, please include and refer to the DEIR Comment Letter from Coast Law Group, dated May 4, 2009, submitted to the Newport Beach Planning Department, and the Harbor Commission, on behalf of Residents for Responsible Development (RFRD), of which Joe and Lisa Vallejo, and Kathleen McIntosh, are members.

Sincerely,

Joe Vallejo, Lisa Vallejo

Kathleen McIntosh

Residents for Responsible Development

Exhibit 3

Written Response to Appeal Comments

LETTER NO. 10

CLG
COAST LAW GROUP LLP

169 Saxony Road
Suite 204
Encinitas, CA 92024

Tel 760-942-8505
Fax 760-942-8515
www.coastlawgroup.com

May 4, 2009

James Campbell
Principal Planner
Newport Beach Planning Dept
3300 Newport Boulevard
Newport Beach, CA 92658

Via Electronic Mail
jcampbell@city.newport-beach.ca.us

Re: Aerie Multiple-Family Residential Project
Residents for Responsible Development
Comments on Draft Environmental Impact Report

Dear Mr. Campbell:

Coast Law Group LLP represents the interests of Residents for Responsible Development (RFRD) with respect to the City's review of the above-referenced project (the "Aerie Project" or "Project"). RFRD is comprised of a group of concerned neighbors living in Corona Del Mar and Newport Beach. Thank you for the opportunity to participate in the review process and to submit comments on the Draft Environmental Impact Report (DEIR). While RFRD is not opposed to the appropriate development of the subject property, the Project as currently proposed does not comply with the City's land use regulations and therefore fails to adequately protect the site's coastal bluff and surrounding resources.

Further, the DEIR is legally deficient under the California Environmental Quality Act (CEQA) because it fails to carry out the statute's informational goals. As the City is aware, CEQA mandates full disclosure to promote informed decision-making and an opportunity for meaningful public participation. The statute's fundamental goals have not been carried out in this case. Given the scope of the Project and the numerous significant impacts associated therewith, the Project cannot be approved as currently designed. With these issues in mind, RFRD respectfully submits the following comments for the City's consideration:

1. **Coastal Bluff Impacts**

The DEIR is legally deficient under CEQA because the Project will result in significant land use impacts. As a cursory review of the DEIR discloses, construction of the proposed condominium structure will result in the complete eradication of the underlying coastal bluff. Notwithstanding this obvious fact and the City's express coastal policies prohibiting the same, the DEIR fails to discuss or otherwise acknowledge the significance of this loss. Indeed, the DEIR painstakingly avoids the issue altogether and therefore fails to satisfy its informational purpose under CEQA.

10-1

Per appendix G of the CEQA Guidelines, a proposed project will result in a significant land use impact if it conflicts "with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect."

Here, the City's General Plan and Coastal Land Use Plan (CLUP) set forth express provisions prohibiting the physical alteration of coastal bluffs and landforms. Particularly relevant to the

consistency analysis in this case, these regulations are separate and distinct from the general restrictions that apply to aesthetics and compliance with the predominant line of existing development (PLOED)

O-1 CON'T.

For instance, one of the discrete goals of the General Plan is to ensure that "[d]evelopment respects natural landforms such as coastal bluffs." (General Plan, Goal NR23, p. 10-40). To effectuate this goal, the Natural Resources Element sets forth a number of specific coastal bluff policies, including the following:

> NR 23 1. Maintenance of Natural Topography: Preserve cliffs, canyons, bluffs, significant rock outcroppings, and site buildings *to minimize alteration of the site's natural topography* ***and*** preserve the features as a visual resource.

(General Plan, p. 10-40, emphasis added).[1]

O-2

Similarly, the CLUP contains a discrete section addressing "*Natural Landform Protection*" (see CLUP §4.4.3, p. 4-74 to 4-80) and expressly states that coastal bluffs are to be protected. (*Id.* at p. 4-75). In doing so, the CLUP notes that coastal bluffs have been "physically or visually obliterated by structures, landform alteration or landscaping." (*Id.* at p. 4-75). As with the General Plan, the CLUP sets forth a number of specific policies to ensure that new development complies with its protective mandate. For instance, the CLUP states:

> 4 4 3-12: Employ site design and construction techniques to minimize alteration of coastal bluffs to the *maximum extent feasible*, such as . . . [u]tilizing existing driveways and building pads to the maximum extent possible [2]

(CLUP, pp. 4-78, 4-79)

O-3

Furthermore, the CLUP specifically references the coastal platform occupied by Corona del Mar and addresses the manner in which bluff-related development may occur. Notably, the clear intent of the CLUP is to prohibit any further alteration of Corona del Mar's coastal bluffs. The CLUP states:

> Corona del Mar is one of the few areas in the coastal zone where there is extensive development of the bluff face; specifically, residential development on Avocado Avenue, Pacific Drive, Carnation Avenue, and Ocean Boulevard. The initial subdivision and development of these areas occurred prior to the adoption of policies and regulations intended to protect coastal bluffs and other landforms. Development in these areas is allowed to continue on the bluff face to be consistent with the existing development pattern and to protect coastal views from the bluff top. However, development of the bluff face is controlled to minimize ***further*** alteration

(CLUP, p. 4-76; emphasis added).

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[1] *See also* Policy LU1.3 (requiring the preservation of "open space resources, beaches, harbor, parks, bluffs, preserves, and estuaries as visual, recreational and habitat resources)

[2] *See also* Policy 4 4 1-3 ("Design and site new development to minimize alterations to significant natural landforms, including bluffs, cliffs and canyons.").

To ensure Corona del Mar's coastal bluffs are protected in accordance with this intent, the CLUP sets forth the following policy:

10-4

> 4.4.3-8: Prohibit development on bluff faces, except private development on coastal bluff faces along Ocean Boulevard, Carnation Avenue and Pacific Drive in Corona del Mar determined to be consistent with the predominant line of existing development or public improvements providing public access, protecting coastal resources, or providing for public safety. Permit such improvements only when no feasible alternative exists and when designed and constructed to minimize alteration of the bluff face, to not contribute to further erosion of the bluff face, ***and*** to be visually compatible with the surrounding area to the maximum extent feasible.

(CLUP, p. 4-78; emphasis added).[3]

10-5

Thus, as the foregoing illustrates, coastal bluffs in the area have been physically and visually obliterated due to prior development and associated grading activities. To prevent the continued loss of these resources, development must be carried out such that alterations to the natural topography and underlying coastal bluff are minimized to the maximum extent feasible. This mandate is separate and distinct from the obligation to preserve coastal bluffs as a visual resource. And to the extent bluff-related development is permitted in the Corona del Mar area at all, it must be consistent with and limited to the scope of pre-existing structures such that further landform alterations are avoided. These limitations apply because bluff face development is now strictly prohibited and is only allowed per those grandfathered uses.

10-6

In the General Plan and CLUP consistency analysis, the DEIR repeatedly concludes that the Project complies with the foregoing policies because the exterior development will not extend below the PLOED and the structures will have a "curvilinear" design. In doing so, the DEIR completely ignores the Project's lateral encroachments and subterranean impacts to the bluff. The DEIR's consistency analysis is therefore deficient because it fails to address the specific bluff protection policies outlined above. And as detailed below, the DEIR's findings are not supported by substantial evidence and will be subject to challenge as an abuse of discretion.

10-7

The Project is sited above the entrance to Newport Harbor on one of the City's character-defining coastal bluffs. As such, it is visible from public vantage points throughout the Balboa Peninsula and Newport Bay (DEIR, p. 3-2). The bluff is part of the Monterey Formation, which was formed approximately 80,000 to 120,000 years ago and has a "high paleontological sensitivity" due to an abundance of marine life fossils (DEIR, pp. 4.9-1, 4.10-1). The bluffs are considered "significant scenic and environmental resources and are to be protected" (CLUP, p. 4-75).

Notwithstanding the foregoing, the Project will result in the eradication of the site's underlying coastal bluff, as follows: "The upper elevation of the project site is approximately 70 feet above mean sea level." (DEIR, p. 4.7-1; emphasis added). Project construction will require excavation to an elevation of 28 feet. (DEIR, p. 4.2-2, Table 4.2-1). As such, the proposed project will result in the eradication of 60% of the underlying bluff. (*See* DEIR pp. 3-19, 3-21,

[3] *See also* Policy 2.8.1-4 (ensure that new development does not contribute to the "destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs");

Ex. 3-13, 3-14, cross sections illustrating extent of bluff removal).

To accomplish this result, the Project will require the excavation of 25,000 cubic yards of the underlying bluff, which will simply be disposed of in the Brea Olinda Landfill. (DEIR, p. 4.2-3). The need to transport such a large quantity of earth material to the landfill will result "in the generation of approximately 2,105 heavy truck trips over the 5-month grading and excavation phase." (*Id.* at 4.2-3).

The scope of the excavation is further illustrated by the fact that the project will require a setback variance, as "the majority of the encroachments are subterranean." (*Id.* at 4.1-20). In that regard, the site will be completely hallowed out such that only a sliver of the bluff face will remain intact. The DEIR states:

> Excavations for and construction of planned subterranean levels, which will remove existing fill soils as well as a majority of the terrace deposits capping the bedrock and daylighting on the bluff face, will leave a trapezoidal (i.e. pillar) section of intact rock as part of the exposed bluff face to approximately Elevation 52.8 NAVD. With the removal of these materials, the bluff face will be less vulnerable to bluff erosion.[4] Considering the [*sic*] both the lithologic bedrock unit exposed and the rock quality, the remaining trapezoidal section of intact rock will have sufficient strength to remain in place during the economic life of the structure (i.e., 75 years).

10-8

(DEIR pp. 4.9-6, 4.9-7; emphasis added).

The direct purpose of these excavation activities is to accommodate a massive, six story building consisting of over 61,000 square feet by eradicating the underlying bluff and disguising a high-rise structure in its place. (See DEIR, p. 3-12).[5] To allow such a practice would set an incredibly poor precedent for future development in the area and would lead to the complete destruction of the City's coastal bluffs over time. Moreover, the Project would permanently alter the 100,000 year-old bluff in favor of leaving a rock "pillar" that is only expected to remain in place for the structure's 75-year economic life.

Notwithstanding the foregoing, the DEIR states that the Project "has been designed to 'fit' the bluff" and "would not alter the existing landform that characterizes the site." (DEIR, pp. 4.1-20, 4.5-8). As set forth above, these contentions are not supported by substantial evidence. In that regard, there is no question that the Project violates the protective policies of the General Plan and CLUP, as the proposed development has not been designed to "minimize alteration" of the site's natural topography and underlying bluff "*to the maximum extent feasible*." (General Plan Policy NR 23.1; CLUP Policy 4.4.3-8; emphasis added). Further, less intrusive alternatives (that do not require substantial excavation) clearly exist. Based on the foregoing, the Project will result in significant land use impacts and the DEIR's conclusions to the contrary are not

10-9

[4] While the logic of this passage is not entirely clear, it seems to suggest that the excavation activities will somehow constitute a Project benefit because evisceration of the bluff will result in less bluff erosion in the future. This, of course, defies common sense and cannot be relied upon as a justification for Project approval.

[5] The DEIR does not identify the square footage of the site's existing residential structures and therefore fails to provide an adequate baseline for evaluating Project impacts

supported by substantial evidence.

2. **Visual & Aesthetic Impacts**

10-10 Given the bulk and scale of the proposed condominium structure, the Project will result in significant visual and aesthetic impacts under CEQA. The overall building height of the residential structure will be increased by approximately nine feet over the existing multiple-family structure and 17 feet over the existing single family residence. (DEIR, p. 4.5-3) As noted above, the resulting Project consists of a 61,000 square-foot high-rise structure which is entirely inconsistent with the surrounding community in terms of both architectural style and overall mass [6]

10-11 Relevant here, the CLUP states that the City must "[c]ontinue to regulate the visual and physical mass of structures consistent with the unique character and visual scale of Newport Beach." (CLUP, Policy 4.4.2-2). Despite this clear mandate, the DEIR fails to provide a reasoned analysis of the Project's compatibility with the surrounding neighborhood (such as a comparative square footage analysis of other residential structures on Carnation Avenue).

Instead, the DEIR repeatedly states that the Project will not result in a significant aesthetic impact because "it would be smaller than the Channel Reef Development located to the south." (DEIR, p. 4.1-35). Given the DEIR's conclusory discussion of this issue, approval of the Project will be subject to challenge as an abuse of discretion.

10-12 The foregoing deficiencies are equally at issue with respect to the scope of the proposed dock structure. The dock, which will total approximately 3,500 square feet (CRM Eelgrass Survey, p. 21), will accommodate nine vessels, including a 100-foot yacht. While the DEIR does not provide any details regarding the height and bulk of the vessels expected to be moored on-site, there is no question that their presence will directly impact views of Carnation Cove and the adjacent rock outcroppings that form its southwestern boundary.

10-13 With respect to this issue, the General Plan states: "Preserve cliffs, canyons, bluffs, significant rock outcroppings, and site buildings to minimize alteration of the site's natural topography and preserve the features as a visual resource." (General Plan, NR 23.1; p. 10-40, emphasis added). Likewise, the CLUP identifies rock outcroppings as significant landforms that must be protected. (CLUP, p. 4-77)

10-14 In attempting to reconcile the dock structure with the foregoing policies, the DEIR states, "Although some views of the cove and rock features below the bluff from some vantages in the harbor would be partially or totally obscured by the proposed dock facility, the obstruction would be brief and intermittent only as one travels in and out of the harbor." (DEIR, p. 4.1-16; *see also* p. 4.5-8)

This conclusion is not supported by substantial evidence, as it fails to consider the Project's impacts on stationary views *from the Peninsula*. Indeed, the dock system has been sited directly adjacent to the two rock outcroppings such that they will be completely obscured from cross-channel vantage points. (*See* DEIR, Ex. 3-17, depicting extent to which outcroppings will be obscured). By the same token, the DEIR fails to evaluate potential impacts to views from

[6] *See e.g.* visual simulations at Exhibits 4.5-7 and 4.5-8.

Carnation Cove *to the Harbor and Channel*. (*See* CLUP Policy 4.4.1-1, requiring protection of public views to and along the bay and harbor).

10-15 With respect to glare, the DEIR fails to adequately consider the drastic increase in reflective surface area resulting from the Project's design. (*See* DEIR, Ex. 4-15, 3-16). In that regard, the DEIR should evaluate potential view impacts from Harbor and Peninsula vantage points during times of maximum sun reflection.

3. **Noise Impacts**

10-16 While the DEIR recognizes that noise impacts will be significant and unmitigable with respect to construction of the proposed residential structure, it fails to adequately consider dock-related impacts.[7] The DEIR states, "Construction of the dock is scheduled from May 2012 to July 2012 and is estimated to have a duration of 40 days." (DEIR, p. 4.4-20). Given this time-frame, the DEIR must evaluate potential noise impacts to recreational uses within Carnation Cove, as the beach area is most frequently visited during summer months.

10-17 Moreover, the DEIR deliberately understates dock-related construction impacts on neighboring residences. The DEIR states that impacts from drilling noise will reach 71dB and 68 dB at 101 Bayside Place and 2495 Ocean Boulevard, respectively. (DEIR, p. 4.4-20). However, these figures represent average noise impacts. The dock construction noise study prepared by Wieland Acoustics states that maximum noise levels at those locations will reach 83 dB and 77 dB, respectively. (Wieland Acoustics Study, App. E, p. 12). These figures clearly exceed the standard 65 dB threshold of significance for assessing residential noise impacts. (*See* DEIR, p. 4.4-1).

10-18 By the same token, the DEIR completely omits any reference to noise impacts associated with installation of the concrete piles (which will reach 80 dB at the closest residence). (*Id.*). The failure to include this information constitutes a prejudicial abuse of discretion, as the DEIR does not disclose the full extent of the Project's environmental impacts.[8]

4. **Vibrational Impacts**

10-19 With respect to vibrational impacts, the DEIR states that the "analysis of potential short-term vibration impacts was evaluated at both the closest distance that would occur as well as the average distance." (DEIR, p. 4.4-23). However, this does not appear to be accurate, as the vibrational study attached to the DEIR only states that impacts were assessed from a distance of 80 feet. (See Planning Center Study, DEIR App. F, p. 57). In any event, neither the DEIR nor the vibrational study identifies the actual distance between the anticipated impacts and the closest residence.

[7] Regarding construction of the residential structure, the applicable noise study did not consider impacts associated with crane operations on the grounds that use of the rig would be intermittent (Planning Noise Study, App. F, pp. 31-32). However, as is the case with construction traffic, intermittent impacts can result in significant noise impacts. As such, the crane's impacts must be properly evaluated in the Final EIR.

[8] The DEIR also fails to disclose noise impacts to residential structures across the Channel. Notably, drilling-related noise levels will reach 65dB at 2222 Channel Road. (Wieland Acoustics Study, App. E, p. 12). Because this borders the 65 dB threshold, the impact must be disclosed.

Because the Project requires a setback variance to accommodate excavation activities, the impacts are likely to occur within several feet of adjacent residences. As such, the DEIR must address potential vibrational impacts in terms of both cosmetic and *structural* damage. This applies with respect to construction of the condominium structure as well as the dock facility, as "the risk of structural damage still exists even at relatively low vibration levels." (Wieland Acoustics Study, App. E, p. 7). Notably, the study prepared to measure dock-related vibrational impacts does not address this issue. The report states:

> Because it is outside our area of expertise, the risk (if any) of structural damage due to transmitted vibrations or dynamic settlements has not been evaluated in this study. This risk should be analyzed and assessed by qualified structural and geotechnical engineers.

10-20

(Wieland Acoustics Study, App. E, p. 15; emphasis added).

This issue must be adequately analyzed in the Final EIR and to the extent any significant impacts will result the DEIR must be re-circulated. The analysis must give due consideration to site conditions, including the hard rock material prevalent in the Monterey Formation (*see* DEIR, pp. 4.9-1, 4.9-7), as well as the age and physical condition of neighboring structures [9]. Also relevant, the evaluation must be based on peak particulate velocity (PPV) threshold standards. PPV "is most appropriate for evaluating potential building damage since it is related to the stresses that are exerted upon the buildings." (Wieland Acoustics Study, App. E, p. 6) [10]

The DEIR's analysis of vibrational impacts on human perception is likewise deficient, and fails to accurately disclose the findings of the applicant's own reports. Notably, "when groundborne vibration exceeds 72 to 80 VdB, it is usually perceived as annoying to occupants of residential buildings." (*Id.* at p. 8). Per the CEQA Guidelines, a significant impact will be assessed if the project will result in "[e]x[psosure of persons to, or generation of, excessive groundborne vibration or groundborne noise levels. This impact will occur if any construction activity causes the vibration velocity level (Lv) to exceed 72 to 80 VdB at an adjacent residential building." (*Id.*; emphasis added). Here, development of the condominium structure will result in the following impacts at the nearest structures:

10-21

• Loaded Trucks:	90 VdB
• Caisson Drill:	97 VdB
• Large Bulldozer:	97 VdB
• Ram Hoe:	97 VdB

(Planning Center Study, App. F, p. 59, fn. 2).

Based on the foregoing, the Project's construction impacts will exceed the applicable threshold by a substantial margin. As such, the Project will result in significant vibrational impacts to

[9] *See* Wieland Acoustics Study, App. E, p. 6 ("The level of ground vibration experienced at any location depends mainly on the construction method, soil medium, distance from the vibratory source, and the structural dynamics of the building.").

[10] *See also Transportation- and Construction-Induced Vibration Guidance Manual*, California Department of Transportation (June 2004), p. 27. The Planning Center Study does not explain why differing standards were applied with respect to evaluating potential cosmetic damage

neighboring residents and the Final EIR cannot be certified without a statement of overriding considerations on this issue

5. **Eelgrass Impacts**

Eelgrass beds are considered habitat areas of particular concern because they attract "many marine invertebrates and fishes and the added vegetation and the vertical relief [they] provide enhances the abundance and diversity of the marine life compared to areas where the sediments are barren." (DEIR, pp. 4.7-7, 4.7-14). The beds also serve as a nursery for various juvenile fish species (*Id.* at 4.7-7; CLUP, p. 4-9). Further, eelgrass is a major food source in nearshore marine systems, and serves numerous beneficial physical roles (such as reducing wave action and erosion, stabilizing sediment and improving water clarity). (Southern California Eelgrass Mitigation Policy (revision 11), p. 1).

Given the foregoing, the "loss of eelgrass as a result of coastal development is considered to be a significant environmental impact, and any potential impacts to this resource must be avoided, minimized or mitigated." (CLUP, p 4-58; emphasis added) In that regard, the CLUP sets forth a number of eelgrass protection policies, including the following:

10-22

> 4.1.4-1: Continue to protect eelgrass meadows for their important ecological function as a nursery and foraging habitat within the Newport Bay ecosystem.
>
> 4.1.4-3: Site and design boardwalks, docks, piers, and other structures that extend over the water to avoid impacts to eelgrass meadows. Encourage the use of materials that allow sunlight penetration and the growth of eelgrass.
>
> 4.2.5-1: Avoid impacts to eelgrass (Zostera marina) to the greatest extent possible. Mitigate losses of eelgrass at a 1.2 to 1 mitigation ratio and in accordance with the Southern California Eelgrass Mitigation Policy. Encourage the restoration of eelgrass throughout Newport Harbor where feasible.

(CLUP, pp. 4-40, 4-41, 4-60; emphasis added)

The Southern California Eelgrass Mitigation Policy (Mitigation Policy), in turn, "requires all eelgrass patches to be protected or replaced, regardless of its size, location, or habitat value or the extent of eelgrass coverage within the harbor." (CLUP, p. 4-59). However, as a threshold matter, the Mitigation Policy states that transplant mitigation shall only be considered after policies for avoidance and minimization "have been pursued to the fullest extent possible prior to the development of any mitigation program." (Mitigation Policy, p. 1).

10-23

With respect to "boat docks and related structures," the Mitigation Policy expressly reiterates the need to avoid eelgrass impacts from the outset, as follows:

> Boat docks, ramps, gangways and similar structures should avoid eelgrass vegetated or potential eelgrass vegetated areas *to the maximum extent feasible*. If avoidance of eelgrass or potential eelgrass areas is infeasible, impacts should be minimized by utilizing, to the maximum extent feasible, construction materials that allow for greater light penetration (e.g., grating, translucent panels, etc.).

(Mitigation Policy, p. 2; emphasis added)

These avoidance measures are necessary due to "the time (i.e., generally *three years*) necessary for a mitigation site to reach full fishery utilization." (*Id.* at p. 3; emphasis added). The Mitigation Policy also sets forth detailed mapping requirements. It states:

> The project applicant shall map thoroughly the area, distribution, density and relationship to depth contours of any eelgrass beds likely to be impacted by project construction. This includes areas immediately adjacent to the project site which have the potential to be indirectly or inadvertently impacted as well as potential eelgrass habitat areas.

10-23 Con't.

(*Id.* at p. 2; emphasis added)

With respect to these last requirements, eelgrass mapping surveys shall only be valid "for a period of 60 days with the exception of surveys completed in August - October." (*Id.* at p. 3). In addition, *potential* eelgrass habitat areas must be mitigated at a ratio of 1 to 1 (*Id.*)

In this case, construction of the proposed dock facility will violate the CLUP's protective policies and will therefore result in significant eelgrass impacts. Further, the DEIR's proposed mitigation measures are wholly inadequate, as they fail to comply with the basic requirements of the Mitigation Policy.

As a preliminary matter, the prevalence and current location of eelgrass beds in the Project vicinity are not known with sufficient accuracy because the DEIR continues to rely on the March 2007 eelgrass survey (DEIR, p. 4.7-16). While the applicant's eelgrass survey was apparently updated in March of this year, it continues to rely on the survey activities conducted in March of 2007 (CRM Eelgrass Survey, p. 6).

10-24

Per the Mitigation Policy, the 2007 survey is no longer valid and the DEIR therefore relies on outdated information in purporting to assess potential eelgrass impacts. In that regard, a current survey must be performed to evaluate the extent to which the southern eelgrass bed has extended further north into the dock area. (*See* CRM Eelgrass Survey, Fig. 4). Likewise, the status of the eelgrass patch adjacent to the northern property boundary line must be evaluated.[11]

With respect to the substantive policies set forth above, the Project violates the CLUP because the dock has not been sited and designed to avoid impacts to eelgrass meadows "to the greatest extent possible." (CLUP, 4.1.4-3; 4.2.5-1). Indeed, the dock's design and proposed location will result in direct impacts to the eelgrass meadow located to the south of the cove. With respect to vessel-related impacts, the DEIR states that propeller scarring and prop wash associated with the construction barge and support vessels could adversely impact eelgrass vegetation. To mitigate this impact, the DEIR states as follows:

10-25

> Support vessels and barges shall maneuver and work over eelgrass beds only during tides of +2 feet mean lower low water (MLLW) or higher to prevent grounding within eelgrass beds, damage to eelgrass from propellers, and to limit water turbidity.

[11] The survey must also satisfy the Mitigation Policy's requirements with respect to surveying density and identifying/mitigating impacts to *potential* eelgrass habitat areas (*see* Mitigation Policy, p. 2).

(DEIR, p. 4.7-16; emphasis added)

10-25 CONT

However, the DEIR fails to address the significant impacts that will result from boats owned by the residents themselves. As reflected in Figure 5 of the applicant's eelgrass survey, all boats using the dock's southern slips must travel directly through the adjacent eelgrass bed to access the dock. Because no tide-related access restrictions apply, these activities will result in significant eelgrass impacts. The DEIR is legally deficient because it fails to evaluate or otherwise consider this impact.

10-26

Further, the Project not only violates the CLUP, it fails to comply with the express provisions of the Mitigation Policy. The policy states that docks are to be sited and designed to "avoid eelgrass vegetated or potential eelgrass vegetated areas *to the maximum extent feasible*." (Mitigation Policy, p. 2; emphasis added). The surface area of the proposed dock system totals approximately *3,500 square feet* (CRM Eelgrass Survey, p. 21), and the DEIR provides no discussion as to why such a massive structure is required.

10-27

Because the dock system can be eliminated outright or limited to its current size, there is no basis to conclude that eelgrass meadows have been avoided to the maximum extent feasible. Indeed, the elimination of the dock's southern slips could potentially avoid impacts to the cove's eelgrass bed. As such, the scope of the dock must be appropriately reduced before transplanting measures may be implemented under the Mitigation Policy. (See Mitigation Policy, p. 1) [12]

6. **Impacts to Carnation Cove**

Carnation Cove supports "an extremely diverse assemblage of plant and animal life due to its location near the Harbor Entrance Channel and the combination of rocky outcrops and fine sands-to-silt substrates." (DEIR, p. 4.7-8). As such, the Cove is "an important marine sandy tidal flat that displays features that while once present and common, no longer exists in other areas of Newport Bay." (*Id.*; emphasis added). These shallow areas support a significant intertidal sand dollar population which is now unique and rare within the Bay. (*Id.*) "If the sand dollar population that exists in the cove is removed, it is unlikely that it would establish itself at another site because similar conditions do not exist elsewhere in the bay." (*Id.* at p. 4.7-17). The sandy sediment also provides viable bottom habitat for numerous snail species. (*Id.*)

10-28

Given the Cove's inherent biological value, disturbances of the "intertidal and shallow subtidal habitat, eelgrass, and sand dollar bed within the cove would be considered a significant adverse impact to on-site resources." (CRM Eelgrass Survey, p. 22; DEIR, p. 4.7-17).

Although the Cove's tidal habitat is expressly recognized as "unique and rare," the DEIR fails to provide any meaningful discussion as to how dock construction impacts will actually be mitigated. This deficiency is due, in large part, to the fact that the DEIR provides an entirely inadequate project description with respect to dock removal and construction activities. Because the DEIR fails to provide this critical information, the Project's impacts cannot be accurately assessed.

[12] To the extent transplanting measures will apply, the DEIR does not provide sufficient information as to how they will be implemented.

For instance, the DEIR's dock-related project description consists of less than one full page. With respect to dock removal, the DEIR simply states that six support piles will be removed and the existing 20-foot gangway will be replaced by a 60-foot long gangway. Regarding dock construction, the DEIR states that 19 piles will be required to support the new dock and that the four steel piles supporting the gangway platform will be repaired or replaced. (DEIR, p. 3-26)

As to construction activities *within the Cove itself*, the DEIR merely states that the timber walkway will be replaced in-like-kind and "existing concrete piles supporting the walkway will be repaired in the form of concrete repairs." (DEIR, p. 3-26; emphasis added). 10-29

Notably, the pier and walkway structure will pass over one of the Cove's rock outcroppings and directly into the sensitive tidal habitat discussed above. (*See* DEIR, Ex. 3-17). As such, construction activities will take place on the beach and within the sand dollar habitat. Notwithstanding this fact, the DEIR does not provide any meaningful discussion (either in the project description or biological resources section) as to the construction equipment that will be required, the manner in which pier supports and timber replacement will be delivered to the Cove, the manner in which the pier/walkway supports piles will be installed without impacting the sand dollar population, the number of vessels that will be working on-site, and so on

With respect to mitigation measures, the DEIR states that the tidal area will be adequately protected because construction workers will be instructed to avoid the area. (DEIR, p. 4.7-17). However, the DEIR does not explain how this is possible given the need for "concrete repairs" to the supporting piles themselves. Nor does the DEIR explain how silt curtains can be deployed to protect the tidal habitat from these direct impacts. Likewise, the DEIR states that tubidity plumes will be reduced because piles will be removed and replaced using "Best Available Technology" (*Id.* at p. 4.7-18). Yet the DEIR does not provide any explanation as to what technologies will actually be used. 10-30

Moreover, there is no basis to conclude that the remaining "protective" measures (notifying residents of the Cove's sensitivity, placing debris bins on-site, and removal of debris from the seafloor) will adequately mitigate construction impacts. Indeed, the fact that construction debris will need to be removed from the bottom indicates that impacts will in fact occur. 10-31

Given the foregoing, the DEIR contains a legally deficient project description and fails to adequately evaluate the Project's impacts on Carnation Cove. Further, the findings associated with the aforementioned mitigation measures are not supported by substantial evidence.[13] 10-32

7. **Special Status Plant Species**

Under CEQA, the deferral of environmental assessment to a future date runs counter to the statute's express policy which requires that environmental review be conducted at the earliest feasible stage in the planning process. *Sundstrom v. County of Mendocino* (1988) 202 Cal. App. 3d 296, 307 (citing Pub. Resources Code, § 21003.1). 10-33

Here, the DEIR improperly defers the assessment of whether any special status plant species exist on-site. Per the DEIR, nine such species have the potential to exist at the Project site (DEIR, p. 4.7-2), but the extent to which they are actually present remains unknown. In that

[13] The DEIR states, "sand transport impacts are not anticipated as a result of the placement and configuration of piles in a single row that is parallel and not perpendicular to the direction of sand transport." (DEIR, p. 4.7-17). Given the sensitive nature of the Cove, such speculation is improper under CEQA and sand transportation must be adequately studied and evaluated in the Final EIR.

regard, the DEIR states that surveys will be performed to acquire this information "during the appropriate blooming window identified for each species " (DEIR, p. 4.7-13) To the extent any special status species do exist on-site, an incident take permit must be obtained prior to issuance of a grading permit. (*Id.*)

10-33 CONT

Deferral of the impact assessment in this manner is entirely improper under CEQA Notably, all nine species are currently within their blooming window (DEIR, p. 4.7-2) As such, the presence and extent of any impacts must be assessed now so appropriate mitigation measures may be assessed during the CEQA review process. To the extent any such impacts will occur, the DEIR must be re-circulated for public review.[14] Similarly, the DEIR must assess the extent to which dock construction activities will impact the southern coastal bluff scrub community existing on the rock outcroppings. (*See* DEIR, p. 4.7-1).

8. **Traffic and Parking Impacts**

The DEIR"s discussion of parking and traffic impacts fails to satisfy CEQA's informational purpose. For instance, the DEIR fails to adequately consider potential impacts related to off-site construction parking and shuttle transportation, and improperly defers review with respect to the location of anticipated parking sites. The DEIR states that "the applicant will secure one or more binding off-site parking agreements to accommodate the varying number of workers needed for each construction phase." (DEIR, p. 1-9). The DEIR further states that these "off-site parking location(s) will be located within a five-mile radius of the site." (*Id.*)

10-34

Because the DEIR defers the identification of parking sites to a later date, it inappropriately circumvents the public's opportunity to comment on any related impacts - *particularly the concerned residents and businesses that will be located in close proximity thereto*. Notably, the DEIR does not identify how many construction workers are anticipated to park off-site during each phase, the number of parking spaces that will be required, potential sites with sufficient capacity to meet those needs, and the traffic conditions in the site(s)' vicinity. Upon completion of this analysis, the DEIR must be re-circulated to afford an adequate opportunity for public review and comment

10-35

The DEIR is similarly deficient with respect to the identification and analysis of the heavy vehicle staging/queuing areas that will be necessary to ensure that only one truck is present at any given time at the Project site (*See* RCPG Policy 4.04 - "Transportation control measures shall be a priority.")

10-36

Further, the DEIR fails to adequately consider road and safety impacts associated with heavy truck activities. Notably, the roadways in the Project vicinity are antiquated and in poor condition. The surface condition of adjoining streets will be adversely affected by the thousands of heavy truck trips that will occur over the 32-month construction period. In that regard, the DEIR fails to specify the anticipated tonnage per truck or otherwise evaluate road deterioration and safety concerns

10-37

Finally, the DEIR fails to adequately consider potential fire safety concerns associated with the underground parking facility and the extent to which fire personnel will be able to access the same in cases of emergencies

[14] By the same token, deferral of the analysis prohibits an accurate determination of whether the Project will result in significant land use impacts. See CLUP Policy 4.4.3-15; General Plan Policy NR 23.7 (requiring that new development be designed and sited to "minimize the removal of native vegetation"). The same deferral deficiencies apply with respect to the scope of shading impacts on eelgrass beds

9. **Floor Area Ratio**

10-38 Because floor area ratio (FAR) is a measurement used to determine development intensity and is based on *developable land space*, areas that cannot be developed or improved are not to be included in net lot area. With respect to the proposed condominium structure, the applicant has inappropriately included the site's submerged lands in the FAR calculation. Doing so has resulted in a project that is not compatible with the surrounding neighborhood in terms of size, bulk and scale. Because FAR regulations are intended to ensure that new construction remains consistent with existing development and community character, the violation thereof will result in a significant land use impact under CEQA.

10. **Setback Variance**

10-39 While the City is afforded discretion in justifying variances and modifications, its discretion is subject to significant limitations. In that regard, a variance may be proper where the harms that the regulatory scheme is intended to prevent would not otherwise occur. In this case, the requested setback variance will result in significant unmitigable impacts to the underlying coastal bluff. As such, approval of the Project as currently proposed will severely compromise the integrity of the City's land use regulations and policies. The request is therefore improper and should be denied

11. **Miscellaneous**

10-40 The DEIR is further deficient because it fails to consider (i) the extent to which kayak/small boat access to Carnation Cove will be obstructed during summer dock construction activities, (ii) the Project's impacts on waste disposal capacity as a result of dumping 25,000 cubic yards of bluff material into the Brea Olinda Landfill; and (iii) the extent to which the expanded dock facility (and associated construction activities) will impact channel navigation and recreation.

12. **Conclusion**

10-41 As detailed above, the Project will result in a number of significant environmental impacts in addition to those relating to construction noise. By failing to adequately evaluate those additional impacts up front in the DEIR, the City improperly limited the scope of environmental review. Likewise, the massive size, bulk and scale of the Project is not compatible with the surrounding community, as reflected by the structure's excessive square footage and the resulting need to eradicate the underlying coastal bluff. Based on the foregoing, the Project is not legally defensible and approval of the EIR in its current form will constitute an abuse of discretion.

Sincerely,

COAST LAW GROUP LLP

Ross M. Campbell

Marco A. Gonzalez

CC: Client
Karl Schwing, California Coastal Commission (by e-mail)

10. Coast Law Group (May 4, 2009)

Response to Comment Nos. 10-1 through 10-5

The commenter offers the interpretation that Natural Resources Policy NR23.1 provides two separate and distinct development objectives that are to minimize alteration of a site's natural topography and to preserve the site's features as a visual resource. The commenter points to CLUP Policy 4.4.3-12 and the narrative of the Coastal Land Use Plan regarding the goal to control bluff face development to minimize further alteration. These two objectives cannot be separate and distinct when considering that CLUP Policy 4.4.3-8 that allows development on the Corona del Mar bluff faces provided it is done so in accordance with the identified PLOED. If minimizing alteration of a site's topography were a separate goal, minimizing alteration would suggest no alteration beyond that associated with existing development would be allowable. If this were the case, a site well within the PLOED could not achieve development levels comparable to the predominant development pattern and an inequity would be created that is contrary to Policies 4.4.3-8 and 4.4.3-9. Both of the NR23.1 objectives are achieved when development does not alter the topography of the site in excess of the PLOED.

The comment incorrectly states that the intent of the CLUP is to prohibit any further alteration of coastal bluffs in Corona del Mar. Development on coastal bluff faces in Corona del Mar, including Carnation Avenue, is controlled to minimize further alteration and is permitted by CLUP Policies 4.4.3-8 and 4.4.3-9. Development must be within the PLOED. The City Council established a PLOED for the site at elevation 50.7 feet NAVD88. The project is proposed to be more than two feet higher than the PLOED at elevation 52.83 feet NAVD88, except for a dock access/emergency exit at elevation 40.5 feet NAVD88, which will be recessed and screened from public view by rocks and/or landscape elements. The basement and sub-basement levels are subterranean and will not be visible from either the street or the bay. Project implementation will result in the removal of man-made elements (except the existing access stair on the bluff face) located below the PLOED that currently affect the visual character and integrity of the bluff. Specifically, the bluff face is altered to varying degrees with retaining walls supporting the apartment building and exterior walkways. This bluff face alteration due to existing development extends down the bluff faced to varying elevations from approximately 68 feet to as low as 42.3 feet. As a result of development, these altered portions of the bluff face below elevation 50.7 feet NAVD88 (PLOED) will be restored. The remainder of the bluff face below the PLOED established by the City Council will be preserved. These aspects of the proposed project will avoid a significant impact to the visual quality and views and will result in an enhanced view of the bluff below the proposed building when viewed from the Bay.

The commenter suggests that that the project is inconsistent with a portion of CLUP Policy 4.4.3-8 that "permits such improvements only when no feasible alternative exists…" The reference in CLUP Policy 4.4.3-8 to "such improvements" has been interpreted by the City Council to refer to the "public improvements" referenced in the first sentence of the policy and not "private development." Therefore, the commenter's interpretation of Policy 4.4.3-8 is not accurate.

The comment further states that "to the extent bluff-related development is permitted in the Corona del Mar area at all, it must be consistent with and limited to the scope of pre-existing structures such that further landform alterations are avoided. These limitations apply because bluff face development is now strictly prohibited and is only allowed per those grand-fathered uses." The commenter presumably believes that bluff face further development of bluff faces is prohibited except where pre-existing structures have altered the bluff face. Indeed this is one interpretation of PLOED policies, but it fails to recognize the fundamental principal of the policy. Properties are presently developed on the bluff face to differing degrees and those properties that are not developed consistent with the predominant development pattern are allowed to further alter the bluff face to achieve development judged to be within the identified predominant development pattern; it is a way to preserve a measure of equity in property rights by allowing similar lots in similar topographic settings to be developed in a similar manner. In this

case, the City Council considered the existing development along the Carnation/Ocean bluff and the identified the PLOED at 50.7 feet NAVD88. The project is proposed to be more than two feet higher than the PLOED at elevation 52.83 feet, except for a dock access/emergency exit at elevation 40.5 feet that is recessed and screened from public view. As a result, the proposed project is consistent with existing development pattern of the area and it preserves the bluff face below the proposed residential structure as a visual resource in a manner that minimized alteration of the site's natural topography consistent with CLUP and General Plan policy.

Response to Comment No. 10-6

The comment incorrectly concludes that that CLUP's policies apply to subterranean excavation and "lateral encroachments." This conclusion is not supported by the plain wording of the CLUP policies. The referenced policies (4.4.3) never discuss subterranean excavation and/or lateral encroachments. To the contrary, they regularly make reference to "bluff faces" (4.4.3-8, 4.4.3-9). Therefore, the DEIR properly concludes that the project is consistent with the CLUP policies analyzed in Table 4.1-2. With respect to minimizing landform alteration, refer to Responses to Comment Nos. 10-1 through 10-3.

Response to Comment No. 10-7

The comment incorrectly states that the project will result in the eradication of the site's underlying coastal bluff. As stated in these responses to comments, the lowest elevation of the proposed project (other than the dock access/emergency exit) is approximately 10 feet higher on the bluff than the lowest extent of a portion of the foundation of the existing residential structure. Additionally, excavation behind the bluff face will not adversely affect either the stability of the bluff or appearance of the bluff. The issues raised by this comment are fully addressed in General Plan and CLUP consistency analyses (refer to Tables 4.1-1 and 4.1-2, respectively) in Section 4.1 of the DEIR.

It is important to note that the reason to minimize landform alteration is to avoid visual impacts in the context of the CLUP policies and Coastal Act. Alteration of the bluff below and behind the bluff face and PLOED does not compromise either the integrity of the bluff as intended in Policy NR 23.1 or the PLOED as established by the City Council. While the intent of Policy NR 23.1 may be the "preservation" of the bluff, development must balance the goals of maintaining/enhancing the aesthetic character of a coastal bluff and, at the same time, minimize landform alteration. The project has been designed to achieve that balance by respecting the PLOED as established by the City Council, incorporation of a landscape palette that is complementary to the City's coastal bluff environment, and siting and designing the structure to conform to the existing bluff topography. As a result, the project is consistent with the intent of these policies.

Response to Comment No. 10-8

The commenter provides conclusory statement without stating any basis for those conclusions. The comment alleges that excavation associated with the proposed project would "set an incredibly poor precedent for future develop merit in the area and would lead to the complete destruction of the City's coastal bluffs over time." This is incorrect. Developments like the proposed project require extensive environmental review prior to approval. If such future projects could lead to bluff instability or erosion impacts, those issues would be examined in the course of that environmental review. Ultimately, the City will make an individualized determination as to the appropriateness of a given project for a given site. It is therefore both inaccurate and irresponsible to suggest that approval of the proposed project would somehow "lead to the complete destruction of the City's coastal bluffs over time."

The comment further alleges that excavation associated with the proposed project would "would permanently alter the 100,000 year-old bluff in favor of leaving a rock 'pillar' that is only expected to remain in place for the structure's 75-year economic life." This intentionally misrepresents the DEIR's

reference to a 75-year economic life. The reference to 75 years in the DEIR was not intended as an upper-limit on the durability of the rock pillar. Instead, it was a direct response to CLUP Policy 2.8.6-10, which requires developers to "[s]ite and design new structures to avoid the need for shoreline and bluff protective devices during the economic life of the structure (75 years)."

A number of technical studies have been prepared to assess the potential project to ensure that development of the site is consistent with CLUP Policy 2.8.6-10. These studies include: (1) Grading Plan Review Report prepared by Neblett & Associates, August 2005; (2) Coastal Hazard Study prepared by GeoSoils Inc., dated October 2006; (3) Stormwater Pollution Prevention Plan prepared by Hunsaker and Associates dated June 2005 (revised January 17, 2008); and (4) Hydrology analysis prepared by Hunsaker & Associates Irvine dated March 2007 (Revised December 20, 2007). Collectively, the findings of these studies and technical review documents indicate that the project will neither be subject to nor contribute to erosion, geologic instability, geologic hazard nor require shoreline protective devices during the economic life of the structure (75 years). In addition, the proposed project will be designed to comply with current CBC structural design parameters and other measures prescribed in the geologic/geotechnical report prepared for the project. Additionally, to further validate the conclusions of the studies pertaining to the stability of the bluff, the City retained an independent third party geologist to review the stability issue. That third party geologist, GMU, concurred with the conclusions of the reports regarding bluff stability.

Although footnote 4 of this comment suggests that the engineering and geological studies defy common sense, the reality is those studies are based on sound scientific and engineering data and analysis. Additionally, footnote 5 of this comment states that the DEIR does not identify the square footage of the site's residential structures. The DEIR provided information related to the size of the site, number of units, percent of site coverage to provide the appropriate baseline for evaluating project impacts. As a point of information, the square footage of the site's existing residential structures is approximately 16,493 square feet. (Note: This number is referenced in the Air Quality Technical Appendix.)

Response to Comment No. 10-9

Refer to Responses to Comment Nos. 3-8, 2-11, 3-18, and 10-4. The comment states that "the Project violates the protective policies of the General Plan and CLUP), as the proposed development has not been designed to 'minimize alteration' of the site's natural topography and underlying bluff "*to the maximum extent feasible*." (Emphasis in original.) The City disagrees. The project is proposed to be more than two feet higher than the PLOED at elevation 52.83 feet NAVD88, except for a dock access/emergency exit at elevation 40.5 feet NAVD88. As a point of reference, the lowest reach down the bluff face of the existing apartment building is 42.3 feet NAVD88. Project implementation will therefore result in up to a maximum of approximately 10 additional vertical feet of bluff face along a portion of the bluff that is currently altered, as compared with existing conditions. As an added benefit, the man-made features (e.g., concrete remnants, pipes, etc.) would be removed from the bluff face below the proposed structure, which would be landscaped and enhanced with native plant materials.

Response to Comment No. 10-10

The comment incorrectly concludes that the proposed project would result in "significant visual and aesthetic impacts under CEQA" because it will be taller and larger than existing development. This comment reflects disagreement with the conclusions presented in the Draft EIR. However, it does not provide new facts or new analysis that would permit a meaningful response. Other than noting that the project is not a high rise structure and it is not the tallest structure nor the structure with the greatest number of stories in the vicinity, the commenter is referred to the analysis in Section 4.1 (Land Use/Relevant Planning) and Section 4.5 (Aesthetics) for the detailed analysis supporting the conclusions presented in the DEIR.

Response to Comment No. 10-11

It should be noted that a comparative floor area analysis, as suggested in this comment, is not necessarily the only or best measure of determining potential visual impacts related to the physical mass of a particular structure within a visual context. Other factors, such as architecture, building materials, site design, and conformity with the natural topographic features, in this case, a coastal bluff, are but a few of the factors that determine a project's potential visual impacts.

The Corona del Mar community is represented by a variety of architectural styles and designs and is characterized by a range of smaller single-family detached residences to large, multiple-family structures when viewed from the harbor. Although the proposed multiple-family structure be unique in character, its mass would not be unique when compared to other structures in the immediate vicinity, including the Channel Reef development. What the comment characterizes as an "abuse of discretion" is reference to a much larger project two lots from the proposed project. To the contrary, to pretend that the diversity of architecture and structures within the neighborhood does not exist would ignore the directives of CEQA to analyze the project in the context of the existing environment. Many of the 17 visual simulations contained in Section 4.5 clearly depict the diverse structures both in terms of design and mass that are present in the neighborhood. In addition, these simulations illustrate that the physical mass of the proposed structure is not out of character when viewed in context with the existing structures.

Response to Comment No. 10-12

This comment is incorrect. The height and bulk of the boats anticipated to utilize the proposed dock facilities are illustrated in each of the visual simulations from the harbor vantages (refer to Exhibit 4.5-14 through 4.5-19). As indicated in those visual simulations and discussed in the accompanying analysis of the view impacts, the potential effects of the proposed docks would alter views from several vantages; however, the views would only be interrupted for a short period of time as one travels up and down the channel. None of the existing aesthetic amenities (e.g., bluff formations below the PLOED, rock outcroppings, cove, etc.) would be destroyed or permanently damaged as a result of project implementation and views to the bluff and below, although temporarily affected, would not be lost. As a result, potential visual impacts are anticipated to be less than significant.

Response to Comment Nos. 10-13 and 10-14

As indicated in the visual analysis and reiterated in Response to Comment No. 10-12, none of the existing rock outcroppings would be destroyed or permanently altered. The proposed project has been designed in accordance with the established predominant line of existing development (PLOED) established by the Newport Beach City Council with the exception of the emergency access, which has been designed to be indiscernible from the harbor.

Exhibit 4.5-4 (Simulation V02) does provide a visual perspective from Channel Road Beach, which is located across the channel from the subject property. As indicated in that visual simulation and discussed on page 4.5-8 in the Draft EIR, when occupied by one or more boats, the proposed boat docks would also obscure some of the rock features located below the bluff. However, it is important to note that views of the majority of the natural features located north of the proposed docks would not be affected. The affect would be similar to that related to view blockage that would occur with boats that could be docked at the existing dock facilities. Therefore, while the proposed project would result in some long-term obstruction from public vantages along the Peninsula, the incremental effect of such obstruction when compared to the existing obstructions as well as those that could occur from the use of the existing docks would be less than significant.

Response to Comment No. 10-15

Refer to Response to Comment No. 2-21.

Response to Comment No. 10-16

Based on the data provided in Section 7 of the referenced report, and using a distance of 130 feet from the proposed dock construction to the beach at Carnation Cove, it is estimated that the average construction noise level will be 72 dB(A) and the maximum noise level will be 77 dB(A) during the drilling phase. During the concrete pile phase the estimated average construction noise level will be 69 dB(A) and the maximum noise level will be 77 dB(A). The estimated increase in noise level due to construction activities will be 14.6 to 21.5 dB(A) during the drilling phase and 11.6 to 18.5 dB(A) during the concrete pile phase. These levels do not substantially increase the severity of the identified noise impact and do not change the DEIR's finding of unavoidable significant construction noise impacts. Recreational uses in the small cove are limited to swimming and kayaking when the tide is higher in the Bay and occasionally sun bathing when the cove is exposed at low tide. Physical access from the water will be maintained during construction of the docks; however, visitors may choose to avoid the cove during the construction period. Noise would be intermittent during the day and intermittent during the overall construction. Assuming that access to the cove might be affected for up to 40 days, the resulting impact to access (for recreational use of the cove) is considered less than significant considered the intermittent, short-term nature of the potential impact.

With respect to footnote 7, crane usage at the project site was estimated by the project's architect to occur for less than 15 percent of the time. The graphics in the Construction Noise and Vibration Study depict average conditions for each of the major construction phases. Inclusion of noise contour graphics for all types of equipment that would be used during the construction of the proposed project would not be practical. The noise contour graphics were included to portray typical noise level exposures at the noise sensitive uses proximate to the project site. Due to the intermittent and infrequent nature of crane usage at the project site, this noise source was not included as part of the portrayal of typical conditions. In addition, the inclusion of noise generated by intermittent crane usage would not result in a substantial increase in the severity of noise impacts or change the finding of unavoidable significant construction noise impacts nor would it substantially change the magnitude of noise generated at the project site.

Response to Comment No. 10-17

The commenter is correct that maximum noise levels were not identified in the main body of the DEIR. However, as indicated in the comment, they can be found in Appendix E of the DEIR. The location of these maximum noise levels within the DEIR does not affect the DEIR's analysis or conclusions. With regard to a "standard 65 dB threshold of significance for assessing residential noise impacts", the 65 dB standard referred to in the comment is a community noise equivalent level (CNEL) standard and is applied only to transportation noise (e.g., traffic) since it considers 24 hours of continuous noise exposure. Construction noise is controlled by Section 10.28.040 (Construction Activity – Noise Regulations) of the City's Municipal Code. This section of the Code controls construction noise by regulating the hours during which it is allowed to occur. There are no quantitative standards for construction noise levels.

Response to Comment No. 10-18

The noise impacts associated with the installation of concrete piles are discussed in Appendix E of the DEIR. Referring to the appendix, it can be seen that both the average and maximum construction noise levels during the concrete pile phase of dock construction are expected to be less than the noise levels during the drilling phase. The location of this discussion within the DEIR does not change the DEIR's finding of unavoidable significant construction noise impacts nor does it change the magnitude of construction noise generated at the project site.

The noise impacts at residences across the Channel are discussed in Appendix E of the DEIR. The location of this discussion within the DEIR does not change the DEIR's finding of unavoidable significant construction noise impacts. With regard to the 65 dB threshold, please refer to Response 10-17.

Response to Comment No. 10-19

The comment states that the vibration analysis only addresses construction equipment working 80 feet from vibration-sensitive uses. Both the average and maximum vibration levels were assessed as shown in Table 18 of the *Construction Noise and Vibration Study*. The average vibration level is based on equipment operating at the center of the project site, approximately 80 feet from the nearest residence. The maximum vibration level is based on equipment generally working between 9 and 13 feet from the nearest residence as shown in the attached tables. The attached table summarizing vibration further supports the conclusions regarding vibration impacts set forth in the DEIR.

Response to Comment No. 10-20

The comment requests that cosmetic and structural damage be taken into account in the DEIR. Cosmetic and structural damage from construction activities were evaluated as shown in the analysis starting on page 4.4-22 of the DEIR, Section 7.2 of the *Environmental Noise Study for the Construction of the Proposed Carnation Cove Dock Replacement Project*, and Section 4.2.2 of the *Construction Noise and Vibration Study*. Cosmetic and structural damage are considered as the same type of impact. The DEIR specifies cosmetic damage relative to project generated vibration because structural damage may imply damage to the structural integrity of a building, which would not occur due to construction activities.

The comment also requests that the analysis consider site conditions, including the geology at the project site. The methodology for the assessment of vibration impacts is consistent with the methods adopted by the Federal Transit Administration for construction activities. Prediction of vibration impacts is inherently difficult due to the multitude of variables, such as geologic strata, soil type, presence of water, etc. The most accurate method of determining levels of vibration at sensitive uses is through the use of vibration monitoring equipment included in the Construction Management Plan (CMP). The CMP requires that vibration probes be placed at 215 Carnation Avenue to monitor construction activities at the site due to its proximity and relationship to the subject property. A vibration monitoring program will identify any construction activity that exceeds the criteria for cosmetic damage. If cosmetic damage occurs, the applicant has agreed to indemnify the property owners in the immediately contiguous lots against any losses resulting from that cosmetic damage, provided that those contiguous owners provide the applicant with access to their structures to allow a pre-demolition inspection of the current condition of their structures. With the implementation of the vibration monitoring, which includes use of alternative methods if vibration levels have the potential to cause cosmetic or structural damage and the requirement to indemnify property owners of vibration-induced cosmetic/structural damage, vibration impacts were found to be less than significant.

Response to Comment No. 10-21

The comment states that the DEIR's analysis of annoyance from construction-generated vibration is deficient in that it exceeds the FTA's threshold of perceptibility. Although the vibration does exceed the threshold of perceptibility, as stated in the DEIR and the Construction Noise and Vibration Study, the assessment of human annoyance from construction vibration were based collectively on four criteria and not a single one:

1. perceptibility
2. frequency of occurrence
3. time of occurrence

4. duration

These four criteria provide a more comprehensive approach to the assessment of what constitutes "excessive" vibration impacts (as cited by the comment) as opposed to the sole criterion of vibration perceptibility.

An example of this is inherent in the assessment of construction noise. Construction noise would be perceptible for hundreds of feet and, in some instances, thousands of feet. However, the mere audibility of construction noise does not constitute an impact. As with the assessment of vibration impacts, the same factors required for vibration assessment need to be considered. For example, if a backhoe were used for utility trenching along a roadway during the day for four months, the noise from this activity would be perceptible, but, due to the occurrence during the least noise sensitive portion of the day, it would not be a significant construction noise impact. However, if this same backhoe were working in the late night for the same amount of time to avoid causing traffic congestion, it would likely be construed as a significant construction noise impact due to the increased sensitivity people have to noise during the late night. The noise generation from the backhoe would remain the same, but the other factors need to be considered in the overall assessment of vibration impacts.

Because of the importance of these four criteria, the vibration impact analysis for construction activities does not rely solely on perceptibility to determine potential vibration impacts.

Response to Comments No. 10-22 through 10-27

Comments acknowledged. Refer to Responses to Comment Nos. 2-9, 2-36, and 4-5. In regards to vessel transit, vessels transit throughout Newport Harbor transit over eelgrass beds in the vicinity of Corona del Mar, Balboa Island, Balboa Peninsula, Bay Island, and Harbor/Linda Isles, and within yacht club basins. Except for where depths are extremely shallow (at the inner edges of docks), we have observed no propeller scars or evidence of adverse impacts due to normal vessel movement approaching docks. Eelgrass in the vicinity of the project dock area is located at depths between -6 to -12 ft MLLW. These depths are sufficient for vessel transit to and from the docks without adverse impacts to eelgrass.

The commenter further expresses the opinion that the proposed dock structures are not consistent with CLUP Policies 4.1.4-3 and 4.2.5-1 in that they have not been designed to avoid impacts to eelgrass to the "greatest extent possible" and that insufficient mitigation is proposed for operation of the slips. Policy 4.1.4-3 calls for the design of structures including floating docks over the water to "avoid impacts to eelgrass meadows." Policy 4.2.5-1 states; "Avoid impacts to eelgrass (*Zostera marina*) to the greatest extent possible. Mitigate the loss of eelgrass at a 1.2 to 1 mitigation ratio and in accordance with the Southern California Eelgrass Mitigation Policy. Encourage the restoration of eelgrass throughout Newport Harbor where feasible." Both policies provide for mitigation of impacts. Refer to Responses to Comment Nos. 2-9, 2-36, and 4-5 and Section 4.7 (Biological Resources) of the DEIR for a discussion of measures that have been incorporated within the project to avoid and mitigate impacts to eelgrass. The proposed docks have been designed to avoid the eelgrass beds to the maximum extent while providing one slip per unit and maintaining necessary maneuvering area between the proposed docks and nearby docks for the safety of use. The only possible way to avoid impacts and further is to provide a smaller dock structure thereby providing berthing for fewer boats or smaller boats. Given the nature of the propose project, this change is not practical; however, the City Council will need to consider if the project has avoided and mitigated impacts to eelgrass consistent with CLUP policies. In regards to potential vessel-related impacts, vessels constantly transit throughout Newport Harbor over eelgrass beds and except where depths are extremely shallow (at the inner edges of docks at low tides), no propeller scars or evidence of adverse impacts due to normal vessel movement approaching docks have been observed. Eelgrass in the vicinity of the project dock area is located at depths between -6 to -12 ft MLLW. These depths are sufficient for vessel transit to and from the docks without adverse impacts to eelgrass.

Response to Comment Nos. 10-28 through 10-32

The construction work associated with the docks and gangway will not result in any significant impacts to the sand dollar habitat or eelgrass beds. Materials associated with the disassembly and demolition of the docks and the 'over the water gangway' will be removed via a barge. The removal and repair on the upper fixed pier walkway will be completed from the walkway level after a protective barrier (15 mil Stegowrap) has been placed below it during construction to minimize the possibility that construction debris could impact the marine environment. As shown in the figure associated with comment 4-5, sand dollars have not been identified in the sandy area near the pier walkway. That figure is based on a survey performed in August 2008 by Coastal Resource Management. As a result, all work associated with the upper fixed pier walkway will maintain a distance of no less than 50 feet from the sand dollar habitat.

The repair to the concrete piers will be from the sandy area below and completed during low tide. Again, as shown in the figure associated with Response to Comment 4-5, no sand dollars are located in this area. Each pier area will be protected by draping a 15 mil thick Stegowrap barrier over the sand and over the two-foot tall plywood wall that will be built around each concrete pier. All construction debris and concrete repairs will be contained within this 'clean zone' and will be removed from the site by the contractor by land.

The construction barge will be outfitted with the drilling equipment, storage tanks, hoists, and materials, including the pre-cast piles. The concrete piles will be loaded onto the barge from a nearby shipyard, which will be the material loading and off-loading venue for the entire dock project. The drilling operation will incorporate a steel casing or sleeve around the hole to be drilled. During the drilling itself, a vacuum hose will extract debris from the casing and pump it into a storage tank on the barge, filtering materials from the sea water as it pumps. The concrete pre-cast pile will be hoisted from the barge into predrilled holes. Each pile will have a full depth silt curtain placed around it during the placement operation. Finally, the dock sections will be constructed and finished off site, delivered to the shipyard and floated to the Aerie site for assembly. Final utility distribution and dock accessories will be in-place on the floating dock.

A marine biologist will monitor the dock demolition, pile installation and all associated rebuilding to ensure, among other things, implementation of Best Management Practices, as specified in the Construction Management Plan and DEIR (pages 4.7-16, 18.) A silt screen will be placed across the entrance to the cove where eelgrass and sand dollar beds are located. The eelgrass silt curtains will be placed under the direction of the marine biologist for each operation. This will ensure that impacts to the intertidal marine resources will be avoided.

Response to Comment No. 10-33

Contrary to the commenter's contention, when the formulation of the precise means of mitigating impacts is truly impractical at the time of project approval, the agency may devise measures that will satisfy specific performance criteria identified at the time of project approval. (*See e.g.,* Sacramento Old City Assn. v. City Council, 229 Cal.App.3d 1011(1991).) The commenter notes that surveys are proposed to be performed during the appropriate blooming window identified for each species, and argues that waiting for that blooming season is improper under CEQA. The basis for the commenter's contention appears to be that "all nine species are currently within their blooming window." However, the Notice of Preparation of the DEIR was published on September 23, 2008, and preparation of the DEIR, followed by public review, has occurred since that time. This period of preparation was not during the "blooming window" of the species, thus rendering the precise means of identifying and mitigating impacts to these species impractical. As a result, the CMP and the DEIR provide for a pre-construction nesting survey and a series of focused surveys to determine presence or absence of these species. As indicated in Section 4.7 (Biological Resources), a qualified botanist shall conduct focused surveys within the appropriate blooming windows to determine the presence or absence of these species. If during the focused surveys these

species are identified as being impacted by the development, an incidental take permit pursuant to Section 2081 of California Fish and Game Code will be required before a grading permit may be issued.

Additionally, the proposed bluff landscaping plan incorporates native drought tolerant plant species that must be found to be compatible and consistent with California coastal bluff environment. Thus, the legal requirements discussed above have been satisfied. The provisions of the CMP and the DEIR constitute the required commitment by the applicant and the City to avoid or reduce to a level of insignificance all potential impacts to special status plant species.

Response to Comment No. 10-34

The Construction Management Plan requires one or more off-site parking location(s) to be secured in order to prevent construction workers from parking in the neighborhood surrounding the project site. The project applicant will be required to secure a binding agreement to accommodate the varying number of workers needed for each construction phase, which agreement shall be presented to the City prior to the issuance of the permits for the phase of construction that will require the off-site parking. This agreement must ensure that (1) the off-site parking location will commit a sufficient number of spaces to Aerie construction workers during the relevant term, and (2) the off-site location possesses the proper permits and authority to rent the subject spaces. Once the proper agreements are in place, two ten-passenger shuttle vans will run up to 6-8 trips each morning and evening and up to 5 trips at lunch time to/from the project site and remote parking lot.

Once again, because the actual dates of construction are not now known, it is not feasible, much less practical, for the applicant to identify specific impacts and mitigation at the time of project approval. Although the Construction Management Plan requires that the off-site parking location(s) will be within a 5 mile radius of the project site, it is not currently known when construction will commence, therefore it is not possible to execute binding agreements with off-site parking lot operators at this time. It is also not possible to evaluate any site-specific environmental impacts associated with an off-site parking location without engaging in speculation, which is prohibited by the California Environmental Quality Act. Therefore, the applicant has agreed to a condition requiring that, if the Planning Director determines that the operation of the off-site parking shuttle may result in one or more potentially significant environmental impacts that have not been evaluated in this DEIR, appropriate environmental review will commence pursuant to the California Environmental Quality Act prior to the issuance of the permit for the applicable phase of construction. Thus, the legal requirements discussed in prior Responses have been satisfied. The provisions of the CMP and the DEIR constitute the required commitment by the City and the applicant to avoid or reduce to a level of insignificance all potential impacts related to off-site parking.

Response to Comment No. 10-35

Refer to Response to Comment 8-9. Section 2.6 (Construction Process) in the Congestion Management Plan (CMP) included in Appendix B of the Draft EIR includes a project design feature that limits only one truck at a time in 15 minute intervals at the project site. As indicated in the CMP, during the excavation process, flagmen will coordinate with the project foreman at the dump site who will radio in the dump trucks from the Olinda-Alpha Sanitary landfill. In addition, the flagmen will also coordinate ingress and egress of cement trucks and delivery trucks during the respective construction phases. As indicated in the CMP, these trucks would arrive at the site with no greater frequency than the discharge rate by the contractor so that no more than one truck is on-site at one time and that trucks will not need to queue on Carnation Avenue.

Response to Comment No. 10-36

Refer to Responses to Comment Nos. 8-4 and 8-5 above. As indicated above, the CMP addresses all aspects of the construction activities anticipated to occur, including road and safety issues. Section 4.0

(Traffic Control) identifies the haul routes, deliver requirements, and traffic control plan. Section 5.0 (Safety and Security) outlines the measures that will be implemented to ensure pedestrian safety, including fencing, appropriate signage and safe and clean pathways to the project site. In addition, a four-foot wide temporary crosswalk will be created across Carnation Avenue to direct pedestrians to the existing sidewalk on the southerly side of the street, subject to the approval of the Public Works Department.

Response to Comment No. 10-37

The project has been designed to comply with the California Fire Code. As indicated in Section 5.5 on page 5-2 of the DEIR, a preliminary code compliance analysis was conducted by City staff. Based on that analysis, the proposed building is in compliance, although a final compliance determination will be made prior to the issuance of a building permit. If required, the project will be redesigned to address the Fir or Building Departments' comments, including the underground parking component. The project has been designed with several features to facilitate and enhance the provision of adequate fire protection, including an emergency communication device, automatic fire suppression system, automatic and manual fire alarm systems, a fire control room, a Class I wet standpipe, and other features as determined necessary by the Newport Beach Fire Department.

Response to Comment No. 10-38

The commenter incorrectly states that the proposed project violates applicable floor area provisions. The calculation o f the maximum allowable gross floor area based upon applicable Zoning provisions and definitions provided with the Zoning Code (Title 20 of the Municipal Code). The maximum allowable gross floor area for a multi-unit development is 1.75 times the buildable are of the lot. The buildable area of the lot is defined as the lot area minus required setback areas. No provisions for the exclusion of submerged lands from the calculation of the maximum gross floor area exist.

Response to Comment No. 10-39

To the extent that the comment is addressing the significant environmental impacts that could result from the granting of the approval of the modification to the setbacks, refer to Responses to Comment Nos. 3-8, 3-18, and 3-23 for an explanation as to why there are no such significant impacts. To the extent that the comment is addressing the criteria for the approval of the proposed modification, that is not an environmental issue and no further response is necessary.

Response to Comment No. 10-40

The construction of the dock system will not significantly impact the use of the small cove by swimmers or kayaks. The docks are north of the entrance to the cove. Therefore, there is no impact to access or use of the cove. The construction time frame of the docks is estimated to be from May 16 to July 10, of which approximately three weeks will be required for the drilling operation. All construction materials and equipment will access the dock area from the bay via barges designed for this purpose.

The California Integrated Waste Management Act of 1989 (i.e., AB 939) requires that the County must maintain 15 years of available Countywide solid waste disposal capacity. The County's landfill system currently has a 15-year capacity to accommodate the proposed project. As a result, project implementation will not result in any significant impacts on landfill capacity and, further, will not adversely affect the ability of the existing facilities operated and maintained by the Orange County Waste & Recycling (OCW&R) to provide adequate landfill capacity to serve the County. The Orange County landfill system has sufficient capacity to accommodate both the proposed project and future development within the County based on current plans and long-range capacity.

The proposed dock facilities do not extend into the navigable waters of Newport Harbor. Therefore, project implementation will not adversely affect either navigation or recreation. In addition, the barge will stage for drilling and placement of the pre-cast piles landward of (i.e., outside) the 500' channel width and also landward of the line of the existing navigation station north of the docks. Dock construction is outside of the inbound general boating traffic lanes in the harbor channel.

Response to Comment No. 10-41

This comment reflects the commenter's conclusion that summarizes the prior comments. The comment is acknowledged; no further response is necessary.

Exhibit 4
Public Notice

CITY OF NEWPORT BEACH

HARBOR RESOURCES

PUBLIC NOTICE

201 - 207 Carnation Avenue
Dock Replacement Project

The project applicant at 201 – 207 Carnation Avenue is proposing a project which includes *replacement of an existing two slip dock system with a system capable of berthing nine vessels* as shown on the reverse side of this notice.

This dock replacement project will be considered by the Harbor Commission on:

Wednesday, August 13, 2008
6:00 PM
City Hall Council Chambers
3300 Newport Blvd.

The Harbor Commission is requested to advise the City's Harbor Resources Division on the Approval in Concept which is necessary for dock replacement projects of this kind. The Harbor Commission may also advise Harbor Resources on any proposed special conditions. The public is invited to provide comments by attending this meeting and/or by emailing to the address below.

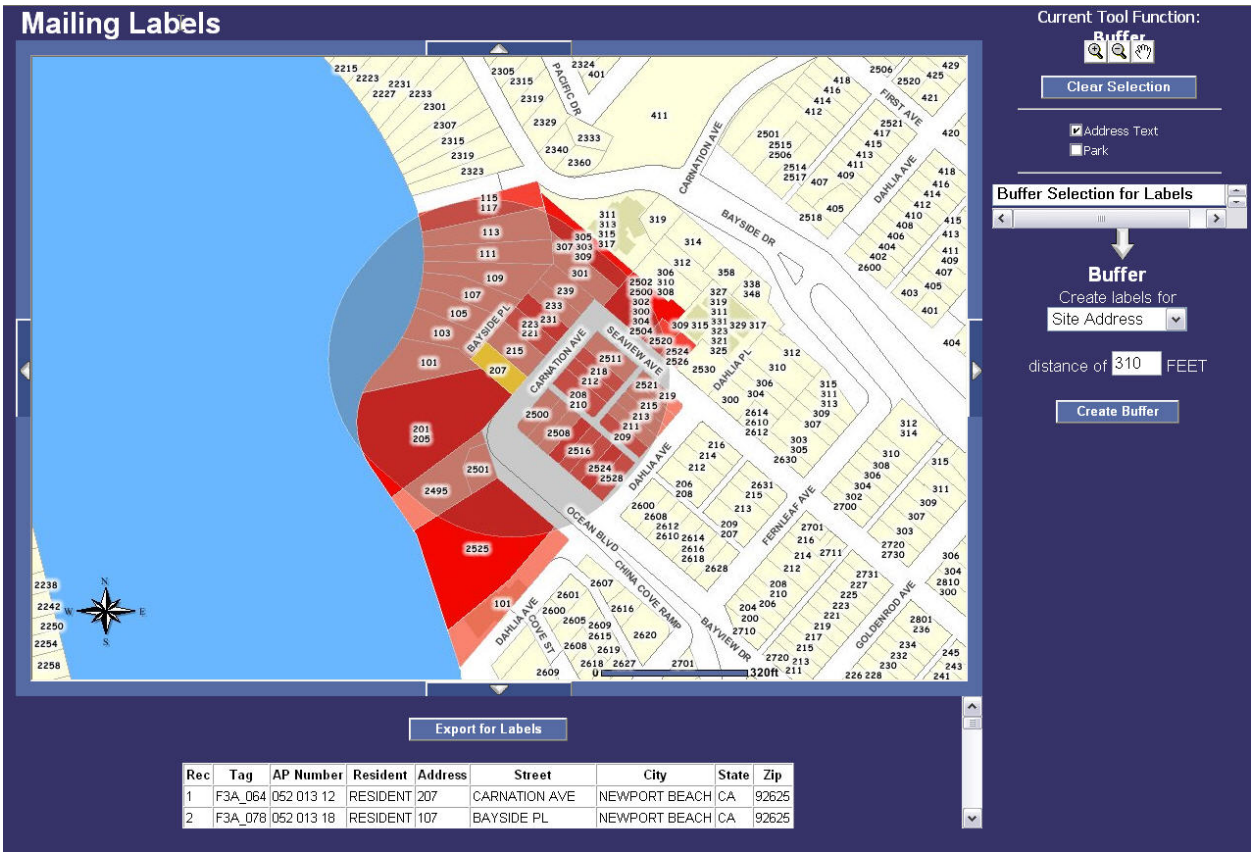
Addition information will be posted to the Harbor Resources website in the coming weeks.

http://www.city.newport-beach.ca.us/hbr/HarborCommissionnew.html

Thank you,

Chris Miller
Harbor Resources Manager
cmiller@city.newport-beach.ca.us
(949) 644-3043

Public Outreach 310' Radius from Project



Rec	Tag	AP Number	Resident	Address	Street	City	State	Zip
1	F3A_064	052 013 12	RESIDENT	207	CARNATION AVE	NEWPORT BEACH	CA	92625
2	F3A_078	052 013 18	RESIDENT	107	BAYSIDE PL	NEWPORT BEACH	CA	92625

Exhibit 5

Previous Harbor Commission Staff Reports (April 8, July 8 and September 16, 2009)

CITY OF NEWPORT BEACH
HARBOR COMMISSION STAFF REPORT

Agenda Item No. 2
April 8, 2009

TO: HARBOR COMMISSION

FROM: Harbor Resources Division
Chris Miller, Harbor Resources Manager
(949) 644-3043, cmiller@city.newport-beach.ca.us

SUBJECT: Aerie Dock Project at 201-207 Carnation Avenue

ISSUE

Should the Aerie project applicants at 201-207 Carnation Avenue be permitted to replace the existing double U-shaped float with a dock system capable of berthing 8 vessels for residents and 1 guest side-tie? A Draft Environmental Impact Report (SCH# 2007021054) has been prepared and is available for public comment and review. The 45-day public review period ends on May 4, 2009 and the Draft EIR and comments received will be considered by the Planning Commission and the City Council who will make a final determination on the adequacy of the Draft EIR prior to taking action on the proposed dock system.

RECOMMENDED ACTION

The Harbor Commission is requested to:

1. Provide comments on the environmental aspects of the dock system, as well as its overall design. Harbor Resources will forward this input to the Planning Commission and the City Council who will review the entire project as a whole.

DISCUSSION

History

On March 12, 2008, staff sought the Harbor Commission's advice on the proposed Aerie dock layout in order to help facilitate the environmental review that would follow. On June 19, 2008, the Planning Commission recommended that the Mitigated Negative Declaration (environmental review) be approved. On July 22, 2008, the City Council heard nearly three hours of testimony and postponed their decision on the Mitigated Negative Declaration until their September 9, 2008 meeting. Relevant to the Harbor Commission's purview, much public discussion focused on the view from the water up to the rocky bluffs, and how the vessels might impact this scenic view. Therefore, staff was tasked with investigating this potential view issue. In addition, the project opponents asked that the Mitigated Negative Declaration be denied and that a full Environmental Impact Report (EIR) be prepared. Minutes from the July 22, 2008 Council meeting may be viewed on the City's website via the Council Agenda for August 12, 2008. In the end, the applicant chose to prepare a full EIR which is publicly available either online at: http://www.city.newport-beach.ca.us/PLN/projects/projects.htm or at the following locations:

Planning Department
3300 Newport Boulevard
Newport Beach, CA 92658-8915
(959) 644-3200

Central Library
1000 Avocado Avenue
Newport Beach, CA 92625
(949) 717-3800

Project Location and Existing Dock System

The Aerie project at 201-207 Carnation Avenue is located near the intersection of Carnation Avenue and Ocean Boulevard near the harbor entrance channel. See Exhibit 1. As indicated, the Bulkhead, Pierhead and Project Lines extend beyond the nearby adjacent docks into the channel. The reason for this unusual Harbor Line configuration is because the Army Corps of Engineers anticipated the bay to be filled to those lines when they were established in 1936. As the years progressed, this never materialized.

The existing floating docks (timber frame, concrete pontoons, and timber deck) are in very poor condition and require complete replacement. These docks can accommodate four (4) small vessels at about 25' to 30' in length. See Exhibit 2.

In June 2007, Harbor Resources requested the applicant to voluntarily demolish the existing dock system because of its hazardous condition. The applicant expressed concern that such an action could jeopardize his ability to construct a replacement dock system; therefore, the deteriorated docks still remain.

Proposed Dock Layout

Eight (8) replacement slips and one (1) guest side tie dock are requested for the eight (8) new residential units proposed. The new dock layout is located between the existing Pierhead Line and the natural rock outcroppings, with special attention to the existing eelgrass bed on the southern side of the property. The new docks will be composed of timber supported by rotationally molded plastic pontoons which require less draft (bottom clearance) than concrete floats, allowing the dock system to be located as close to the rock outcropping as possible. This layout will accommodate boats up to 100-feet in length. See Exhibit 3 and 4.

The current six (6) steel dock guide piles that support the existing docks will be replaced with 19 new guide piles supporting the new dock system. Of these 19 piles, nine (9) will be larger diameter piles (approx. 2-foot diameter) to support the long, outside, bayward-most side-tie float. All guide piles will be pre-stressed concrete piles set in pre-drilled holes. The wave attenuator, as previously discussed in earlier revisions, has been eliminated from the project design.

The existing 20-foot long gangway will be replaced by a 44-foot gangway. The pile-supported pier walkway between the existing gangway platform and the existing concrete pad will be repaired / replaced with a structure in-like-kind (timber-framing system, a 2x timber deck, and timber railings all around). The existing concrete piles supporting the walkway will be repaired in the form of concrete repairs. The gangway platform construction will include the repair and replacement of four (4) steel piles, timber framing with metal connectors, and a 2x timber deck with railings all around. The existing concrete pad, concrete steps, and safety railings will be repaired and patched as necessary.

As discussed at the March 2008 Harbor Commission meeting, the project engineer (URS Cash and Associates) did evaluate several alternative dock designs before finalizing the proposal as described in this report.

One of the Harbor Commission's concerns at the March 12, 2008 meeting was the possibility of the new dock system encroaching upon the main harbor entrance channel. The project engineer has attempted to illustrate that there are ten "lanes" in the entrance channel (defined as 50' wide lanes) at the project location. As one moves further inside the harbor, these ten lanes decrease to nine lanes as a result of the channel marker near Carnation Cove and not as a result of the proposed docks. See Exhibit 5.

Eelgrass is also abundant near the project's edge, particularly near the southern end. See Exhibit 6. As is typical of all dock construction projects, the applicant will submit an eelgrass survey as part of the application process to the federal and state agencies for review. Any impacts will mitigated.

Harbor Commission's Previous Concerns

At the March 28, 2008 Harbor Commission meeting, several concerns were discussed. The applicant's responses to those concerns are:

Storm Wave Conditions

Under extreme conditions, up to 2.5 ft. waves could be experienced at the project site (Noble Consultants, Inc. report, May 9, 2006), impacting 30 to 35 boats in Newport Harbor, including those proposed at the Aerie project. This would be an uncommon event occurring under storm conditions from the South to South East. Based on historical accounts, some boat owners have elected to remain in their existing slips during these extreme events, while others have moved their vessels to City of Newport Beach-managed mooring cans within Newport Harbor. The City has between 80 to 100 mooring cans available to the public at any given time, and has traditionally made these available to boaters on a first come, first served basis. It is understood from the Harbor Resources Department that this practice will remain in place.

The Aerie project will utilize a wood-framed system for strength and flexibility which will be beneficial during extreme wave conditions. The dock design shall be based on the extreme wave conditions identified in the coastal engineering study (Noble Consultants, Inc. 2008). A greater concern is the interaction between a berthed boat and the dock system, since the two will move at different cycles from one another thereby causing large line forces and potential physical impacts. During these infrequent severe conditions, boat owners from the Aerie project, like other boat owners in Newport Harbor, will likely request mooring cans from the City. Toward that end, Mitigation Measure 4.9-2a requires that "during periods when boats would be exposed to excessive wave-induced motions, boats should be sheltered at mooring can locations that are available inside Newport Harbor to avoid damage."

Number of Slips Provided for Project

The Aerie docks will consist of eight boat slips for the eight Aerie residences, with a headwalk extension allowing for the potential side-tie of up to a 30 foot boat for guest

use (visiting vessels). This additional guest dock extension is feasible, since the water depth, eelgrass adjacency and navigation to the adjoining slips is not impacted by the installation of such a dock. This slip would be used strictly for visiting boats and will not be rented or leased.

Eelgrass and Biological Impacts

The eelgrass impact and location of the boat docks has been taken into account with the dock location being previously shifted to mitigate the eelgrass environment. The Harbor Resources Department has reviewed this issue in the past, made recommendations to the Applicant, and the dock design has been revised accordingly. The potential impacts to the eelgrass and biological habitats have been studied by Mr. Rick Ware of Coastal Resources Management (May 12, 2008). The assessment provides for mitigation measures before, during and after construction to ensure protection of habitat that exists on site. With incorporation of these mitigation measures, the project's EIR concluded that potential impacts to eelgrass and other marine species located within the Carnation Cove will be reduced to a less than significant level.

Small boat access to Private Beach and along the Harbor's edge

Access by small and human-powered boating craft along the harbor line is currently restricted by existing docks on the Aerie project site. Although the proposed replacement docks would project further toward the Main Channel than the existing docks, the fundamental navigation conditions for small and human-powered boating craft will not undergo a meaningful change as a result of the project.

Public access to the mean high tide line of the small cove adjacent to the Aerie docks will not be restricted by the project. Kayakers and human-powered watercraft have, and will be able to continue to, access this cove area.

Impacts to natural environment during construction; ie, rock outcropping

The project site's waterfront area is characterized by various rock outcroppings that form a small cove beach. These exposed outcroppings will be protected during the installation of the Aerie docks. To this end, the applicant will not drive pilings into the submerged bedrock, as is typical for these installations. Instead, holes will be drilled into the subgrade (mostly rock strata) and then piles will be installed into those drilled holes. This type of construction limits both noise and vibration.

Potential Shoaling

The Noble Consultants Inc. Report of May 6, 2008, addressed potential shoaling conditions. This report was based on recent observations as well as a review of historical sediment movements, storm conditions, channel orientation, maintenance dredging and storm drainage. Noble Consultants concluded that "with a small percent (approximately 6 percent) of the along-channel blockage areas resulting from the proposed new dock facility, the potential impact to this unique sediment movement process in the entrance channel is insignificant, although localized sand deposit resulting from the presence of the proposed guide piles within the sand-moving path may occur. In addition, the project is located in the down-drift direction of the neighboring Channel

Reef, the project's potential impact on sedimentation at the up-drift location such as Channel Reef is inconsequential."

Future Dredging

Based on the Noble Consultants Report, the impact of this project, as it relates to scour and sedimentation, is considered to be minimal and inconsequential and should not change the characteristics of these processes from historical experience. The beach within the 201-207 Carnation Cove project has historically scoured over time, requiring sand replenishment. The China Cove property to the south has traditionally shoaled, with dredging efforts and sand replenishment of these two facilities coinciding to a balanced "cut and fill" condition.

Special Conditions

Staff has proposed several Special Conditions which the Harbor Commission may evaluate and advise modifying as appropriate. Aside from the routine conditions, these unique Special Conditions are:

1. In accordance with Municipal Code 10.08.030 A. the project applicant shall obtain the proper permits for equipment and materials storage. "Except as otherwise provided in this section, no person shall use any public street, sidewalk, alley or parkway or other public property for the purpose of storing or displaying any equipment, materials or merchandise, or any other commercial purpose. B. Public streets, sidewalks, alleys, or parkways may be used for the purpose of selling, storing, or displaying any equipment, material, merchandise or for other commercial purposes in the following cases:.. For the temporary storage of construction equipment or material provided a permit is issued pursuant to Chapter 12.62 of this Code and the storage is consistent with provisions of the Uniform Building Code."

2. The contractor shall post and update a two week schedule of construction activities at a location(s) easily accessible to local residents.

3. In accordance with Municipal Code 10.28.040 the following noise regulations apply: "A. Weekdays and Saturdays. No person shall, while engaged in construction, remodeling, digging, grading, demolition, painting, plastering or any other related building activity, operate any tool, equipment or machine in a manner which produces loud noise that disturbs, or could disturb, a person of normal sensitivity who works or resides in the vicinity, on any weekday except between the hours of seven a.m. and six-thirty p.m., nor on any Saturday except between the hours of eight a.m. and six p.m. B. Sundays and Holidays. No person shall, while engaged in construction, remodeling, digging, grading, demolition, painting, plastering or any other related building activity, operate any tool, equipment or machine in a manner which produces loud noise that disturbs, or could disturb, a person of normal sensitivity who works or resides in the vicinity, on any Sunday or any federal holiday."

4. The project shall be implemented in conformance with the Local Coastal Program - Coastal Land Use Plan.

5. Eelgrass beds have been found adjacent to the project area and shall be protected per the "Southern California Eelgrass Mitigation Policy" prepared and managed by NOAA/ National Marine Fisheries Service.

6. During construction, disturbance of the adjacent beach shall be minimized. Construction materials and equipment shall not be placed on the beach. The beach's sand dollar habitat shall be protected during construction. The project applicant shall submit a Beach Protection Plan to the Harbor Resources Manager for approval prior to start of construction.

7. The project applicant and its successors are notified that even though the proposed dock system replaces an existing dock system, the new docks will be constructed in the Entrance Channel to Newport Bay which is subject to surge and swell activity which may cause damage to the dock system and vessels berthed therein. It is the responsibility of the project applicant and its successors to maintain and operate the dock system to minimize damage to the dock system and vessels. The dock system shall be subject to nuisance abatement per Title 17 of the Municipal Code, if in the opinion of the Harbor Resources Manager, it presents an endangerment to other facilities or vessels in the harbor.

8. The project applicant must remove the existing dock system including the gangway and pier within 90 days of receiving all final regulatory permits allowing the construction of the replacement dock system.

9. The vessels that will be side-tied to the outside, bayward-most float shall not extend into the harbor more than 24' feet from the edge of this outside, bayward-most float.

10. The guest side-tie on the north end of the dock system shall only be available for vessels less than or equal to 30 feet in length. This slip shall be used for guest berthing only and will not be used for any permanent, long term vessel storage, and will not be rented or leased.

11. The number of boat slips approved in the final design must be the same as the number of dwelling units approved by the City Council in the final project approval.

PUBLIC NOTICE

This meeting has been publicly noticed via a mailer (to the residents and occupants within a 310' radius of the project) and jobsite posting on March 23, 2009 and also posted on the City's website on April 3, 2009. See Exhibit 7.

Written comments received as of April 3, 2009 are attached. See Exhibit 8.

This agenda item has been noticed according to the Ralph M Brown Act (72 hours in advance of the public meetings at which the Harbor Commission considers the item). It was also posted on the City's website.

ENVIRONMENTAL REVIEW

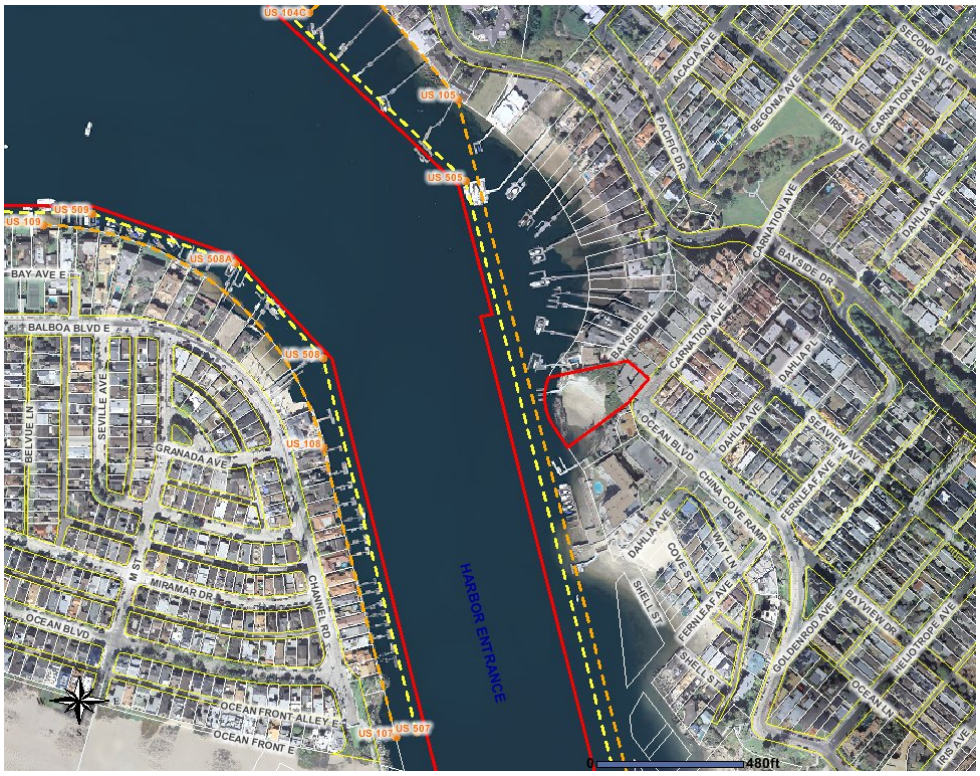
An EIR (SCH# 2007021054) has been prepared for the entire project which includes both landside and harbor improvements. The Planning Commission will consider the entire project and will forward their recommendation to the City Council who will make a final determination as to the adequacy of the Draft EIR. After this point, Harbor Resources staff may issue an Approval in Concept with Special Conditions for the dock portion of the project, assuming the EIR has been approved. If the final review process suggests substantial changes to the dock design, then staff may return to the Harbor Commission for review in the future.

Prepared by:

_____
Chris Miller
Harbor Resources Manager

Attachments:
Exhibit 1: Vicinity Map
Exhibit 2: Existing Dock Layout
Exhibit 3: Proposed Dock Layout
Exhibit 4: Proposed Dock Layout with Dimensions
Exhibit 5: Proposed Dock Layout with Channel Lanes
Exhibit 6: Vicinity Map with Eelgrass
Exhibit 7: Public Notice
Exhibit 8: Public Comments as of April 3, 2009

Exhibit 1
Vicinity Map



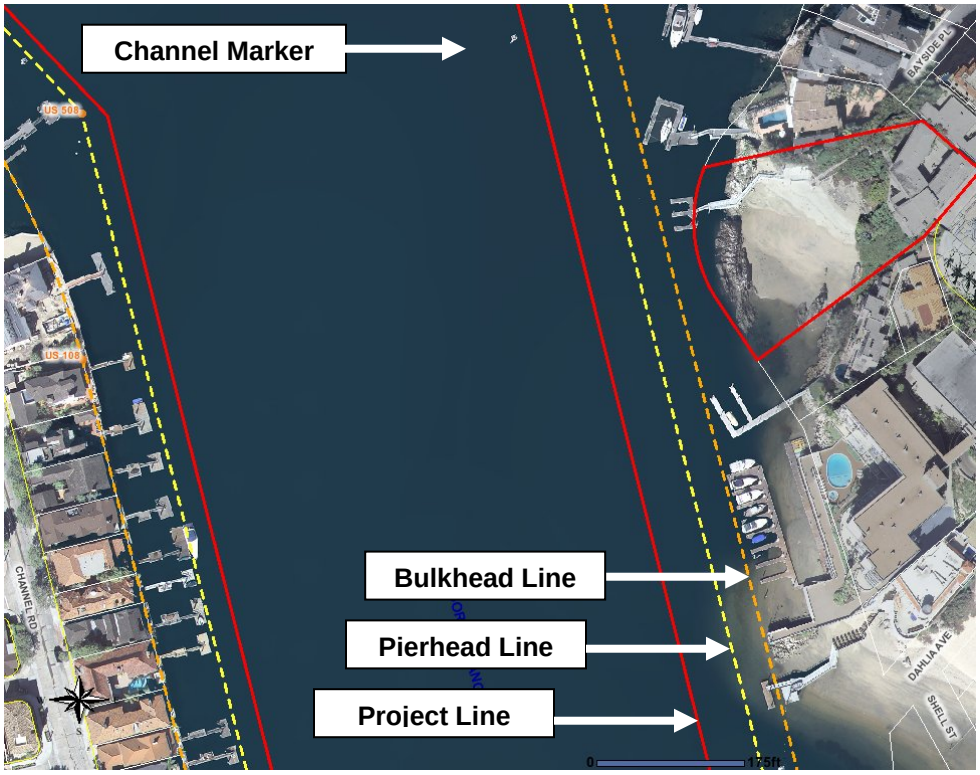


Exhibit 2
Existing Dock Layout

Exhibit 3
Proposed Dock Layout

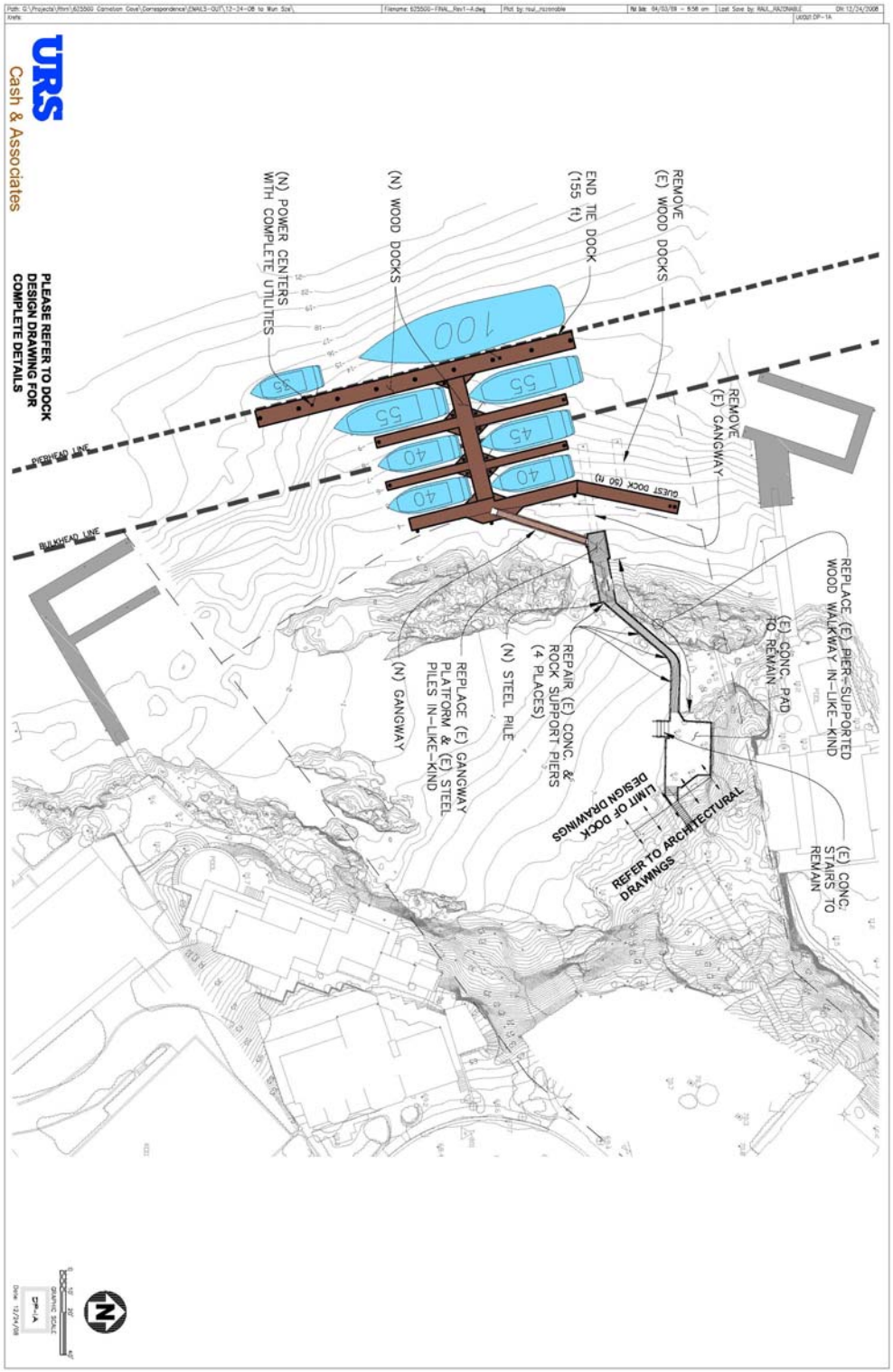


Exhibit 4

Proposed Dock Layout with Dimensions

Exhibit 5

Proposed Dock Layout with Channel Lanes

Exhibit 6

Vicinity Map with Eelgrass

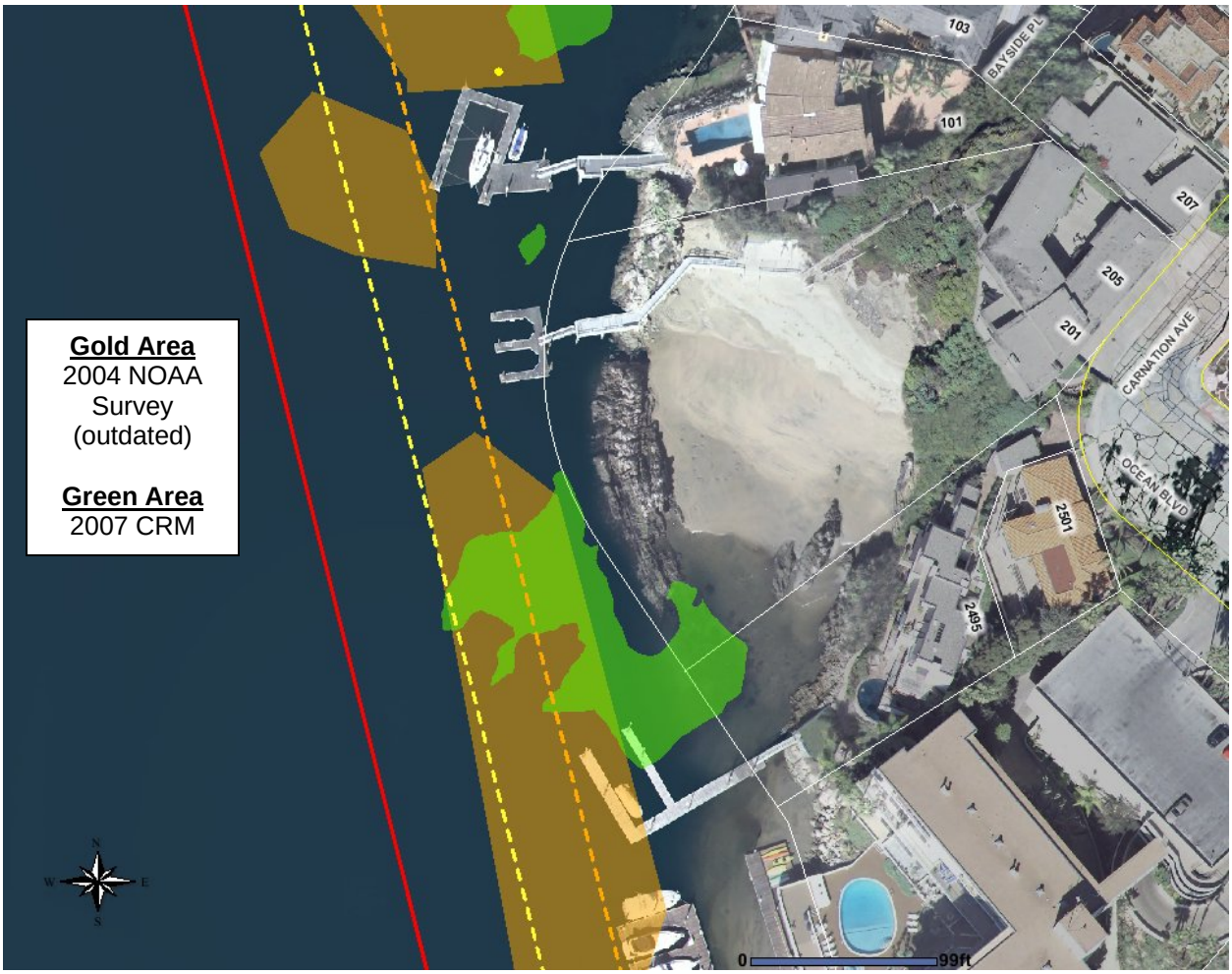


Exhibit 7
Public Notice

CITY OF NEWPORT BEACH

HARBOR RESOURCES

PUBLIC NOTICE

201 - 207 Carnation Avenue
Dock Replacement Project

The project applicant at 201 – 207 Carnation Avenue is proposing a project which includes replacement of an existing two slip dock system capable of berthing four vessels, with a system capable of berthing up to nine vessels. In addition, the upland property will be rebuilt with 8 condominiums.

A Draft Environmental Impact Report (DEIR) for the entire project has been prepared and is available either online at: http://www.city.newport-beach.ca.us/PLN/projects/projects.htm or at the following locations:

Planning Department
3300 Newport Boulevard
Newport Beach, CA 92658-8915
(959) 644-3200

Central Library
1000 Avocado Avenue
Newport Beach, CA 92625
(949) 717-3800

During the EIR public review period, the Harbor Commission is requested to evaluate the DEIR and advise the City's Harbor Resources Division on the Approval in Concept *for the dock replacement portion of the project only.* The public is invited to provide comments by attending this meeting and/or emailing to the address below. The meeting will be held on:

Wednesday, April 8, 2009
6:00 PM
City Hall Council Chambers
3300 Newport Boulevard

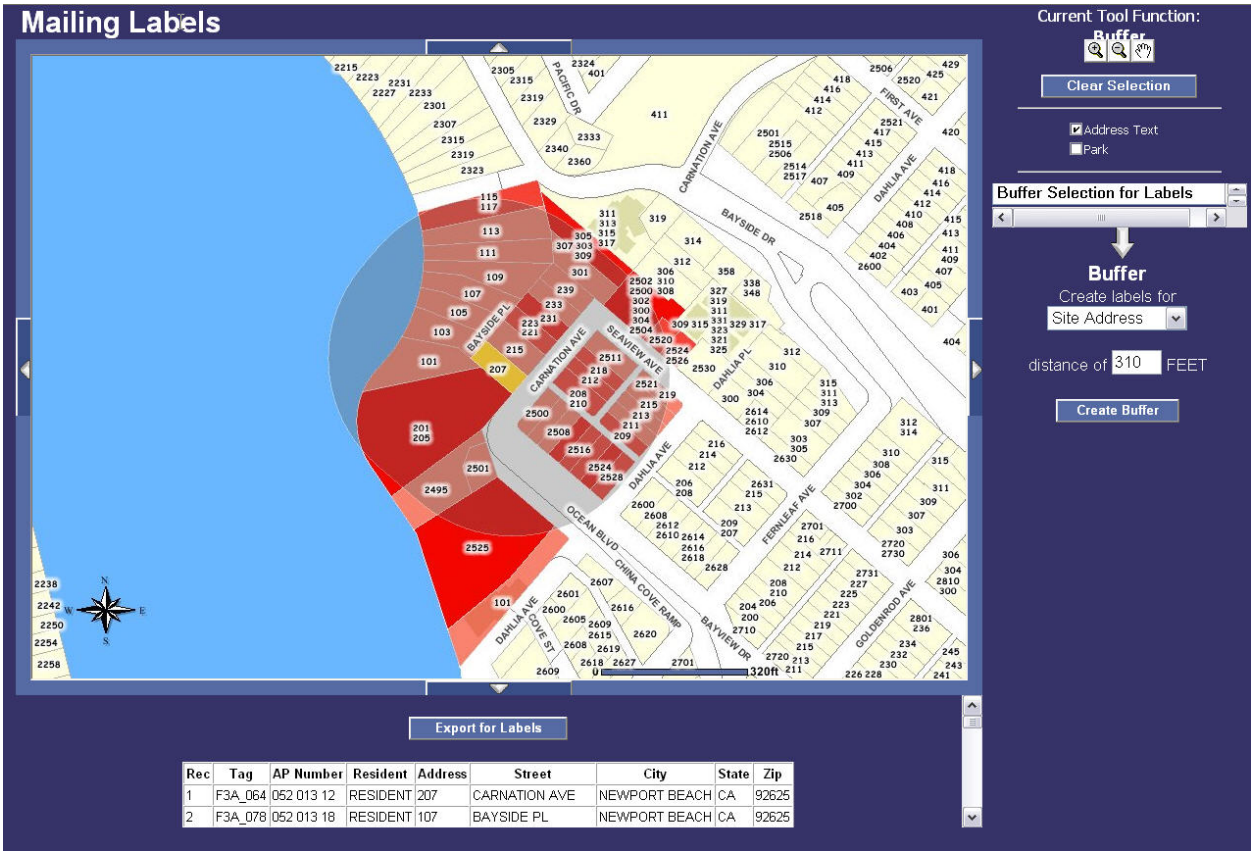
The Harbor Commission agenda and staff report will be available online by April 3, 2009, at: http://www.city.newport-beach.ca.us/hbr/HarborCommissionnew.html

The Planning Commission will be conducting a noticed public hearing on the DEIR for the entire project in May or June of 2009. Notice of said hearing will be separately provided in accordance with applicable law when the hearing dates are known.

Chris Miller, Harbor Resources Manager
cmiller@city.newport-beach.ca.us

829 Harbor Island Drive, Newport Beach, CA 92660
PH: (949) 644-3034 FX: (949) 723-0589 • Website: www.newport-beach.ca.us/HBR/

Public Outreach 310' Radius from Project



Rec	Tag	AP Number	Resident	Address	Street	City	State	Zip
1	F3A_064	052 013 12	RESIDENT	207	CARNATION AVE	NEWPORT BEACH	CA	92625
2	F3A_078	052 013 18	RESIDENT	107	BAYSIDE PL	NEWPORT BEACH	CA	92625

Exhibit 8

Public Comments as of April 3, 2009

August 4, 2008

Dear Mr. Miller;

I hope the members of the Harbor Commission are not seriously considering a dock configuration in its present size and design at this location of Carnation Cove. I live above the Cove to the east, and have resided here for 18 years and in this area most of my life.

I am going to attempt to bring to light the many factors why I feel the existing dock should be rebuilt in its present location, with possibly one more alongside, which are presented in the following comments.

A) An obsolete 78-year old law enacted in 1930 when the Pierhead line was established for this area should not apply today with 13,000-plus yachts in this harbor.

B) This dock configuration would allow two 60' yachts to be docked on the other side of this Pierhead line projecting another 20' to 25' further into the harbor.

C) The dock should stay within the bulkhead line as the McIntosh dock is to the east and the Sprague dock is to the west.

D) The present plan would project approximately 61' beyond the bulkhead line, with two 60' boats in their slips. (Note, all calculations are from the Harbor Commission Public Notice Plans.)

E) When exiting the harbor, the channel narrows starting at the Sprague dock to the west and continues to the mouth of Newport Harbor.

F) Carnation Cove is within this narrow area, and with this project plan projecting out into the harbor it will be a hindrance to navigation for boats entering and leaving the harbor.

G) Another consideration should be the many sailboats, large and small, that use this point to come about - tacking within the harbor.

Now let us consider the environmental impacts.

1) I am requesting a full Environmental Impact Report to be done on this project.

2) In a recent City Council meeting on the Aerie Project the city attorney called the rock formation running parallel to the dock project "A Natural Relic" and the MND report states that "Carnation Cove is an important Marine Relic Habitat that no longer exists in other areas of Newport Bay."

3) Eight to nine boats, two-40', two-45', two-55' and two-60' boats, with an occasional guest vessel at dock #9 would almost completely cover the natural rock formation as it would be out of view to the Public and all boaters who enjoy the beauty of the harbor.

4) Directly in front of the cove is a favorite spot for rental boats from the Pavilion as well as other small boats fishing in the harbor. (They do catch fish here.)

5) The rock formation and cove is a habitat for heron, cranes, pelicans, seagulls and occasionally osprey, all which abound here.

6) There are only two natural rock formations surrounded by water in Newport Harbor, Carnation Cove and Pirates Cove just to the east.

7) Another consideration is disturbing the Eel Grass and marine habitat below the water.

8) The project would close off or potentially eliminate public access to the cove which is often frequented by kayakers, paddlers and small boats.

Last of all is the 155' long, 8' wide concrete wave attenuator that projects into the harbor.

1) There is a history of sand build-up along the Channel Reef Seawall and docks that continues west to the McIntosh Dock. The attenuator wall would most probably create the same problem and could also affect vessel navigation with shallowing of the harbor depth.

2) It could also create wave bounce off the attenuator wall that would affect docks across the bay and farther into the harbor, in particular when dealing with a south swell, as the rock formation as it exists acts as a natural wave diffuser.

If this all sounds negative, it's because it is. This project is not in the best interest of the harbor, boaters or the public, and will negatively impact the community of Newport Beach. It will also affect our children and the future of all who enjoy the beauty and use of this harbor.

I thank you for reading this and am hopeful you will take this project quite seriously.

Sincerely,

Joe Vallejo

CITY OF NEWPORT BEACH
HARBOR COMMISSION STAFF REPORT

Agenda Item No. 2
July 8, 2009

TO: HARBOR COMMISSION

FROM: Harbor Resources Division
Chris Miller, Harbor Resources Manager
(949) 644-3043, cmiller@city.newport-beach.ca.us

SUBJECT: Appeal – Aerie Dock Project at 201-207 Carnation Avenue

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ISSUE

Should the Aerie project applicants at 201-207 Carnation Avenue be permitted to replace the existing double U-shaped float with a dock system capable of berthing 8 vessels for residents and 1 guest side-tie? Based on the recent findings of the Harbor Commission Aerie Task Force, the applicant is appealing the Harbor Commission's April 2009 review which concluded the project does create a significant impact on navigation and recreational boating in the harbor.

RECOMMENDED ACTION

The Harbor Commission is requested to:

1. Review the findings of the Harbor Commission Aerie Task Force and provide comments on the dock system's overall design. Harbor Resources will forward this input to the City Council who will review the entire project as a whole.

DISCUSSION

On April 8, 2009, the Harbor Commission reviewed the dock portion of the Aerie project along with the Environmental Impact Report (EIR). There was much discussion from the Commission and the public about the impact that this proposed dock system would have on navigation in the Entrance Channel. As a result, the Commission made an advisory motion which was: *"While not opposed to the expansion of the existing dock and its area and capacity, we believe the size and configuration of the proposed dock would create a negative impact on navigation and recreational boating in the harbor."* However, the Harbor Commission offered to assist the applicant in further refining their dock design. The original staff report and minutes of the April Harbor Commission meeting are available online at: http://www.city.newport-beach.ca.us/hbr/HarborCommissionAgendas/HarborCom.asp

Subsequently, at the May Harbor Commission meeting, an Aerie Task Force was formed with three members of the Commission: Marshall Duffield, John Corrough and Don Lawrenz. On May 30, 2009, the Task Force visited the site, along with the applicant, and completed a field survey of the existing and proposed dock layout. Their completed report is attached in Exhibit 8. The Task Force presented their findings at the June 10, 2009 Harbor Commission meeting at which time the applicant requested his project be appealed and reconsidered by the full Commission.

Special Conditions

To refresh, staff has proposed several Special Conditions which the Harbor Commission may evaluate and advise modifying as appropriate. Aside from the routine conditions, these unique Special Conditions are:

1. In accordance with Municipal Code 10.08.030 A. the project applicant shall obtain the proper permits for equipment and materials storage. "Except as otherwise provided in this section, no person shall use any public street, sidewalk, alley or parkway or other public property for the purpose of storing or displaying any equipment, materials or merchandise, or any other commercial purpose. B. Public streets, sidewalks, alleys, or parkways may be used for the purpose of selling, storing, or displaying any equipment, material, merchandise or for other commercial purposes in the following cases:.. For the temporary storage of construction equipment or material provided a permit is issued pursuant to Chapter 12.62 of this Code and the storage is consistent with provisions of the Uniform Building Code."

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4. The project shall be implemented in conformance with the Local Coastal Program - Coastal Land Use Plan.

5. Eelgrass beds have been found adjacent to the project area and shall be protected per the "Southern California Eelgrass Mitigation Policy" prepared and managed by NOAA/ National Marine Fisheries Service.

6. During construction, disturbance of the adjacent beach shall be minimized. Construction materials and equipment shall not be placed on the beach. The beach's sand dollar habitat shall be protected during construction. The project applicant shall submit a Beach Protection Plan to the Harbor Resources Manager for approval prior to start of construction.

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11. The number of boat slips approved in the final design must be the same as the number of dwelling units approved by the City Council in the final project approval.

PUBLIC NOTICE

This meeting has been publicly noticed via a mailer (to the residents and occupants within a 310' radius of the project) and jobsite posting on June 23, 2009 and also posted on the City's website on July 2, 2009. See Exhibit 7.

This agenda item has been noticed according to the Ralph M Brown Act (72 hours in advance of the public meetings at which the Harbor Commission considers the item). It was also posted on the City's website.

ENVIRONMENTAL REVIEW

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Prepared by:

_____
Chris Miller
Harbor Resources Manager

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Exhibit 6: Vicinity Map with Eelgrass
Exhibit 7: Public Notice
Exhibit 8: Aerie Task Force Field Survey

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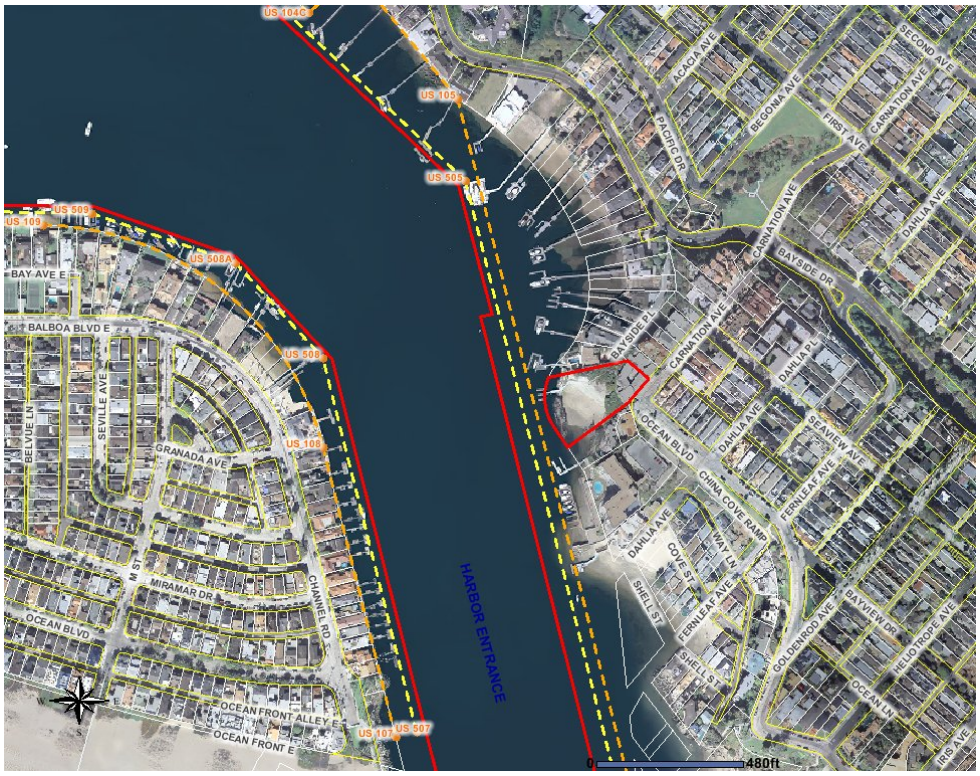
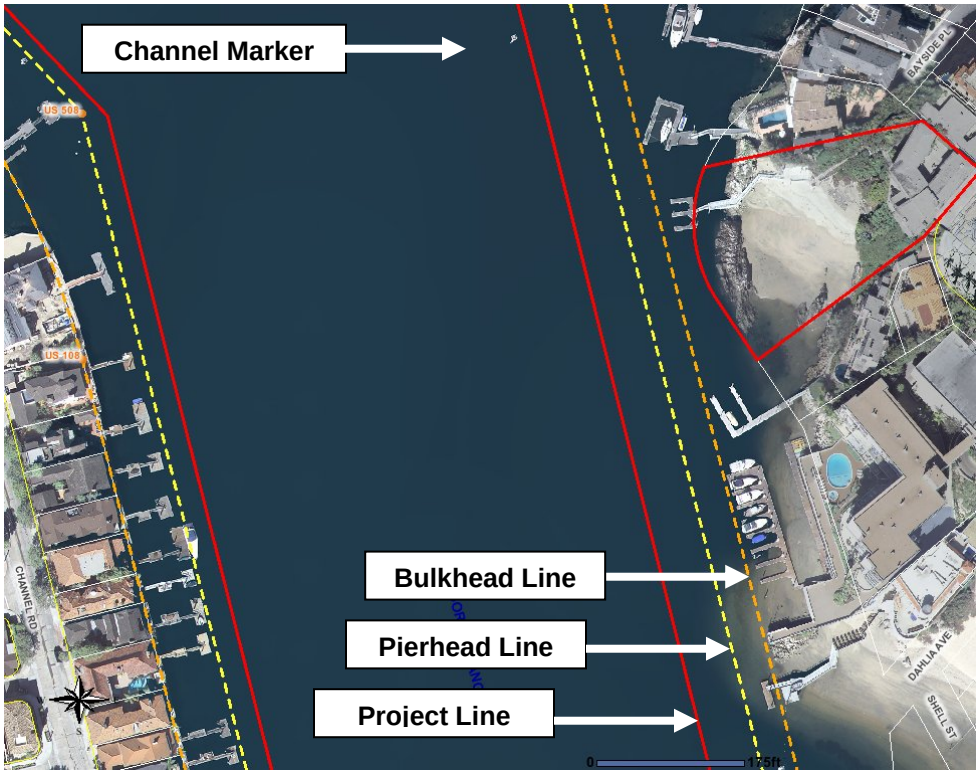
Vicinity Map





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Existing Dock Layout

Exhibit 3
Proposed Dock Layout

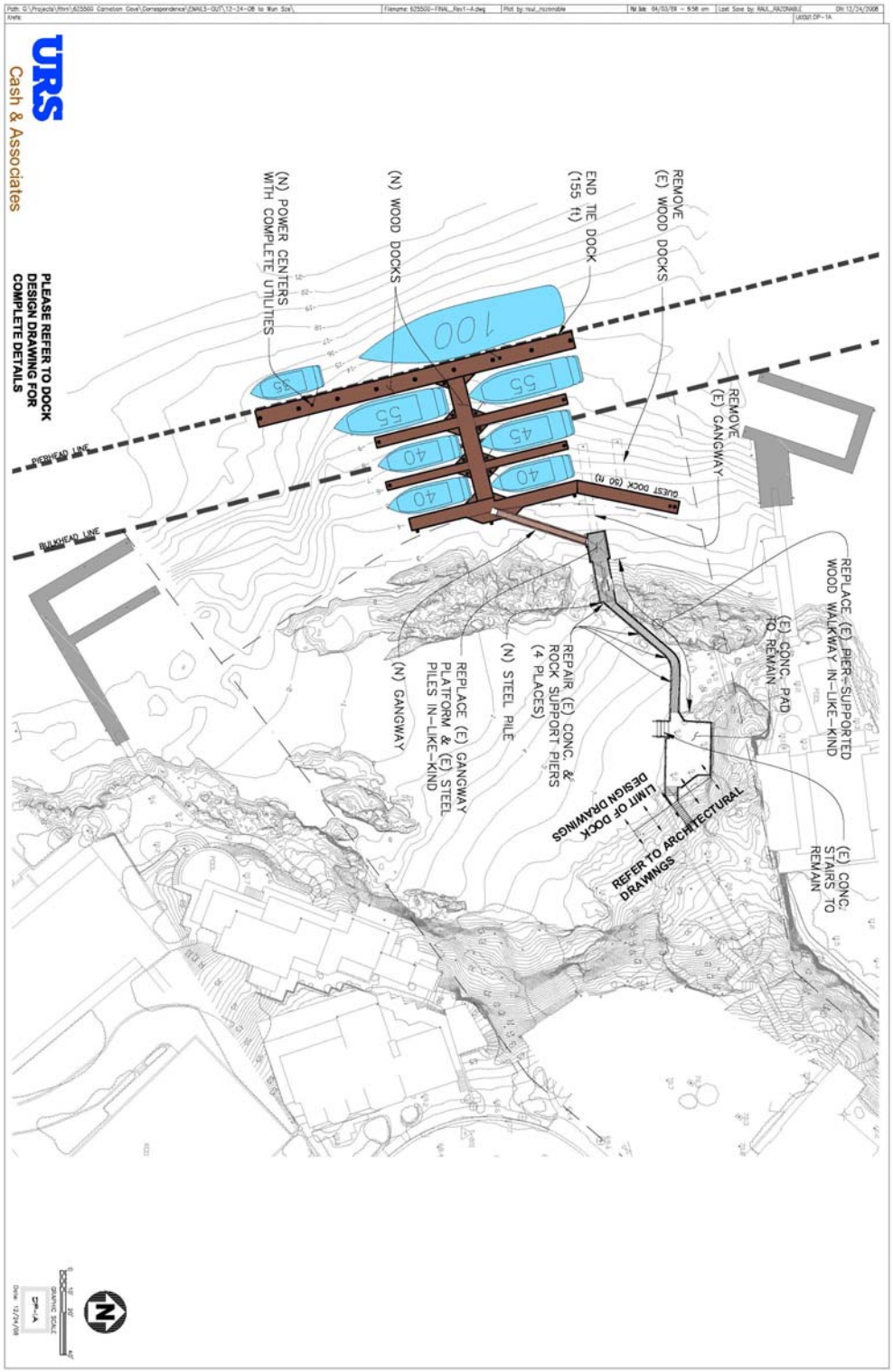

Exhibit 4

Proposed Dock Layout with Dimensions

Exhibit 5

Proposed Dock Layout with Channel Lanes

Exhibit 6

Vicinity Map with Eelgrass

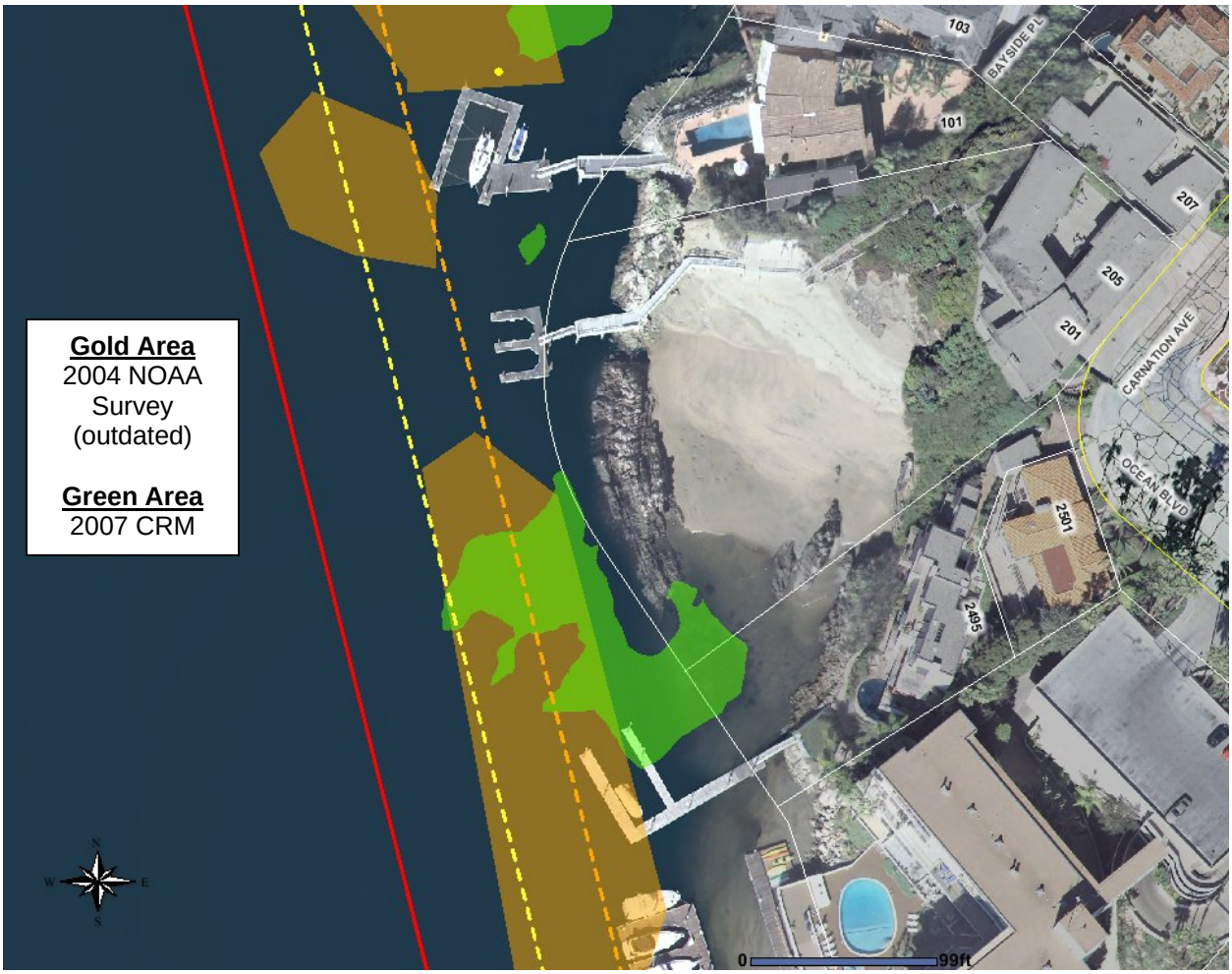

Exhibit 7
Public Notice

CITY OF NEWPORT BEACH

HARBOR RESOURCES

PUBLIC NOTICE

201 - 207 Carnation Avenue
Dock Replacement Project

The project applicant at 201 – 207 Carnation Avenue (Aerie) is proposing a project which includes replacement of an existing two slip dock system capable of berthing four vessels, with a system capable of berthing up to nine vessels. In addition, the upland property will be rebuilt with 8 condominiums. The Harbor Commission has been asked to advise the City Council on the dock replacement portion of the project only.

The Harbor Commission previously considered this project on April 8, 2009 and they had concerns about the dock's impact on navigation and recreational boating in the harbor. A Harbor Commission Task Force was subsequently formed to further study the proposal and possible alternatives. At the June 10, 2009 Harbor Commission meeting, the Task Force concluded that the project does comply with the harbor requirements and does not create a significant impact on navigation and recreational boating in the harbor.

Therefore, the project applicant is appealing the project for the entire Harbor Commission to reconsider. The Harbor Commission will hear this matter on:

Wednesday, July 8, 2009
6:00 PM
City Hall Council Chambers
3300 Newport Boulevard

The Harbor Commission agenda and staff report will be available online by July 2, 2009, at: http://www.city.newport-beach.ca.us/hbr/HarborCommissionnew.html

Chris Miller, Harbor Resources Manager
cmiller@city.newport-beach.ca.us

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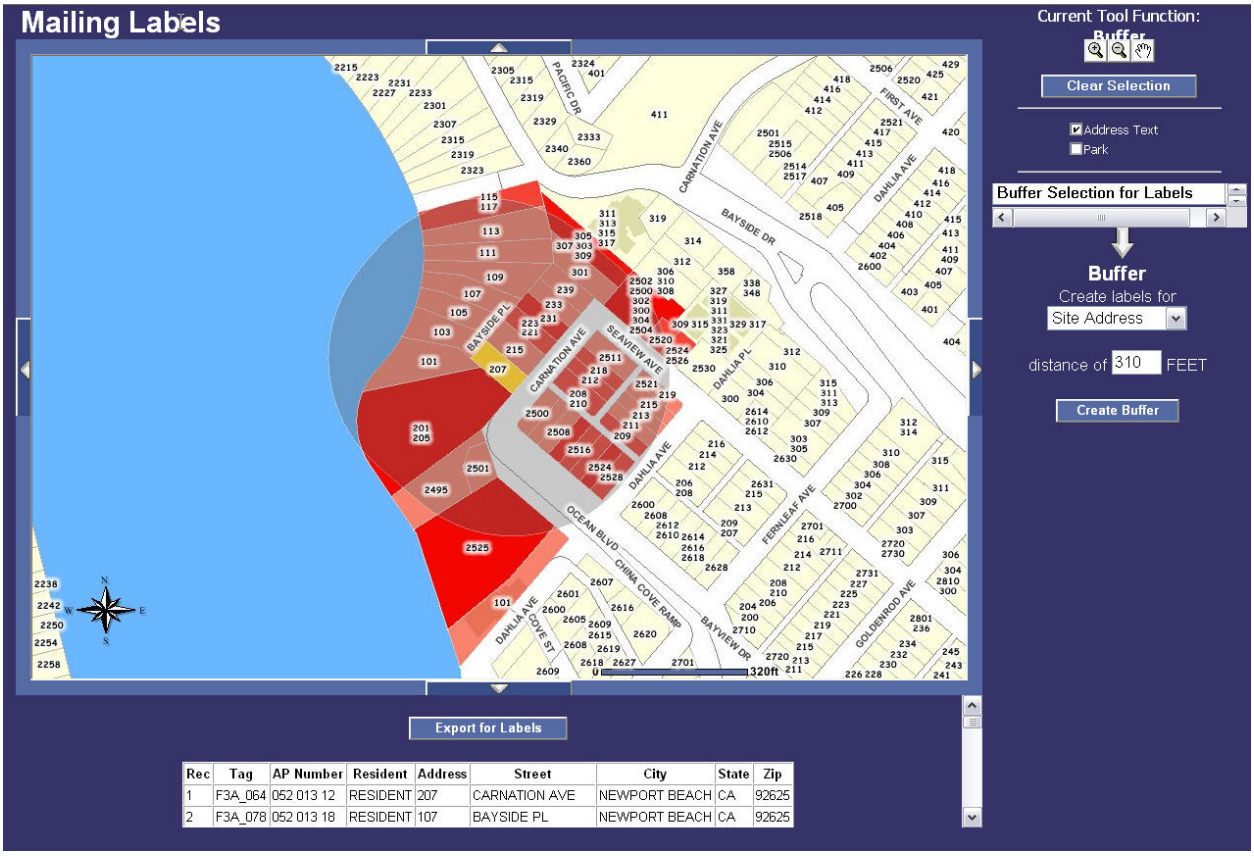
Public Outreach 310' Radius from Project



Rec	Tag	AP Number	Resident	Address	Street	City	State	Zip
1	F3A_064	052 013 12	RESIDENT	207	CARNATION AVE	NEWPORT BEACH	CA	92625
2	F3A_078	052 013 18	RESIDENT	107	BAYSIDE PL	NEWPORT BEACH	CA	92625

Exhibit 8

Aerie Task Force Field Survey

Harbor Commission Aerie Docks Subcommittee Field Survey Memorandum

Background

At the April 8, 2009 Newport Beach Harbor Commission meeting, an advisory motion was passed unanimously that stated:

> " While not opposed to the expansion of the existing dock and its area and capacity, we believe the size and configuration of the proposed dock project would create significant negative impact on navigation and recreational boating in the harbor."

Unresolved Issues

Subsequent discussion among the Commissioners during this meeting, and during a visit by three commissioners to the site (Rodheim, Chairman Duffield & Corrough) indicated that there were a number of unresolved issues and internal HC disagreements with regard to the actual potential extent to which the project might "…create significant negative impact on navigation and recreational boating in the harbor", versus a "perceived/speculated" impact.

Subcommittee Created to Perform Field Survey

As a result, an Aerie Docks HC subcommittee was created, comprised of 3 Commissioners (Chairman Duffield, Lawrenz, Corrough) , who were self-tasked with creating an on-water survey and simulated layout (with properly located and anchored buoys) of the marina, based upon the current engineering drawings for the project, to examine these HC concerns.

Intent and Scope of Survey

The intent of this survey was to visually and physically illustrate, with a high degree of accuracy on the project water area, the actual physical relationship of the proposed dock system to the following specific elements of navigation and water area definition:

a. **The existing 3-slip dock system** to be removed and replaced, new pier access ;

b. **The existing 500' Federal navigation channel** as defined in navigation charts and the engineering plans, the Federal/City Project Line (east channel edge) and the existing Federal navigation aid "R6" consisting of a vertical steel pole , red triangular daymark and light signal with the characteristics Fl R 4S 3M;

c. **The existing adjacent docks** and water areas whose position and navigational approaches were considered and incorporated in the overall proposed new dock configuration, as well as other existing docks in the Carnation Cove area for which the City/HC have granted approvals;

d. **The existing City Bulkhead Line, Pierhead Line, and Federal Project Line** as shown on the project engineering drawings and City documentation of the proposed docks, and the actual use of the navigation channel and adjacent waters;

e. **The existing Shoal Buoy** and shoal to the south, roughly on the Pierhead Line;

Additionally, the continuing general accessibility to the water areas between the navigation channel and the proposed docks/docked vessels as well as the water areas adjacent to and behind these proposed docks/vessels for use by various types of watercraft ranging from small vessels engaged in fishing, kayaks, sailboats and powerboats was informally assessed.

Conduct of Field Survey

On Saturday May 30th, 2009, the Aerie Docks Field Survey was conducted at the project site and in surrounding waters from approximately 12:30 PM to 3:30 PM.

Conditions were overcast, wind S/SW at approx. 6-8 knots, tide slack at start (12:30), rising to a day high of +4.7' at approx. 2:15 PM, creating an estimated 0.8 knot flood current during survey.

In attendance were:

- Chairman Marshall Duffield with an 18' Duffy, digital camera

- Commissioner Donald Lawrenz with a 13' Whaler, 150' tape measure, 3 buoys with anchor tackle, compass and depth sounder, digital camera

- Commissioner John Corrough with project drawings, aerial photos, handheld GPS, handheld bearing compass, digital camera

- Rick Julian, project developer, who assisted from on the existing docks

Prior to the on-water survey activities, a discussion of process and measurements was held, using the project engineering/EIR materials (plans, aerial photos, etc. showing proposed dock locations, dimensions and the various Harbor Lines. (see attached drawings & photos)

The following control dimensions (from the URS engineering layout of the proposed docks) were established and utilized in the survey: (see attached drawings & photos)

- 53.5' (+/- 0.5') distance from the channelward edge of the existing center dock float (of three) on a magnetic bearing of 270 deg. (+/- 2 deg.) was to be used as a baseline for the location of Buoy #1 (15" dayglow red round plastic buoy) to mark the channelward NW corner of the proposed outer dock;

- 24.0' (+/- 0.5') distance, on on a magnetic bearing of 270 deg. (+/- 1 deg.), beyond the location of Buoy #1 was to be used as the location of Buoy #2 (6" dayglow red "pot" buoy) to mark the channelward edge of the 24' side-tie allowed along the channel face of the proposed outer dock;

- 155' (+/- 0.5') distance, on on a magnetic bearing of 180 deg. (+/- 1 deg.), from the location of Buoy #1 was to be used as the location of Buoy #3 (6" dayglow red "pot" buoy) to mark the channelward SE corner of the proposed outer dock.

The on-water placement of the buoys in the locations described above was accomplished by Commissioners Lawrenz and Duffield using the Whaler, with Commisioner Corrough confirming bearings and distances from the baseline point on the existing center dock.

Commissioner Lawrenz utilized adjustable anchor rodes on the buoys to properly position them in relation to current and anchor position, within the required locational parameters.

Distances and positions were again confirmed after placement, using the tape and hand bearing compass, as well as the Whaler compass. Use of GPS for further location was considered redundant and no position recordings were taken. Buoys were in position at approximately 1:30 PM. (see attached drawings and photos)

Photographs of buoy locations and surrounding waters and landmarks were taken from the Duffy by Commissioners Corrough and Duffield, and from simulated approaches along the eastern edge of the navigation channel along both Project Line and Pierhead Line courses of approximately 150 degree (inbound course) view and 330 degree reciprocal view magnetic headings. (see photos)

Additional photos were taken from approximate 90 and 120 degree magnetic sailboat tack headings approaching the proposed dock locations (and reciprocals from the existing docks) to determine the potential effect on sailboats using the of water to be occupied by potential new docks and berth vessels, and the amount of water area potentially remaining available for tacking. No significant effect other than an 80'-90' shortening of the inbound 600'+ tack was noted- other tacks on either side of the dock ends could continue as deeply into the site as present, with the docks in place.

Ability for small, shallow-draft vessels to continue to approach/use the beach and to view the bluff bottom rock formations was also assessed informally and determined to be retained.

Observations from the existing docks by various Commissioners informally noted the courses and actions of vessels approaching and passing by/through the proposed dock area denoted by the buoys included sail and power vessels within the navigation channel , sail vessels outside the east edge of the channel (OCC Shields on an inbound tight beat course), and outbound kayaks and inbound rental fishing boats. No deviation was required.

Buoys and anchor tackle were recovered from their positions at approximately 2:45 PM.

Photographs from the top of the bluff overlooking the existing and future docks site and marker buoys were taken by Commissioner Duffield after the on-water survey. (see photos)

The on-site survey activities were concluded at approximately 3:30 and all Commissioners and vessels departed the site.

Aerie Docks Project Site Survey Findings and Conclusions

1. The proposed docks and their end-tied vessels would not present a direct navigational hazard to any vessels transiting within the established and marked 500' wide Newport Harbor federal navigation channel, and are located well outside the channel /Project Line boundary. This location/configuration complies with existing Newport Beach, federal laws.

2. The proposed docks and their end-tied vessels retain at least a 21'+ clear water buffer between the edge of the channel as defined by the Project Line and the nearest/largest permitted berthed vessel in the project. Small vessels (30' and under) typically meandering inbound or outbound through the open water area between the navigation channel and the project's docks and berthed vessels would continue to have adequate safe clearance between channel traffic and the project's largest berthed vessel for fishing, kayaking, canoeing, etc. This complies with the NB Approval in Concept conditions and EIR.

3. The proposed docks and their end-tied vessels would be located (and would appear) well inside (estimated 70'-80') a typical straight-line inbound course taken by a vessel to clear (by 50' apx.) the existing moored bait barge and the R6 fixed navigation mark, which is a typical day or nite inbound course and navigational waypoint (R6) during the high-traffic summer season when there is increased outbound and inbound traffic present. This continues the existing historic and necessary use of the navigation channel along this portion of its length

and configuration and indicates that the proposed project would not alter this use or compromise safe passage of a vessel depending on these waypoints and course.

4. The "narrowest point of the harbor" for safe/official navigational purposes is not at the project site nor is it created by the design construction and use proposed project, but rather occurs some 350' to the North beyond the proposed project area where the R6 mark marks the bend and narrowing of the channel to the NW. Inbound vessels navigating outside the eastern edge of the navigation channel and to the east of the R6 mark will encounter the County mooring field and private docks and shoreline extending from Carnation Cove beyond which block their route and will typically turn well before the R6 mark. This continues the existing historic and typical use of the navigation channel and adjacent waters along this portion of its length and configuration and indicates that the proposed project would not alter this use or compromise the safe passage of vessels inside the navigation channel or 20' outside of it to the east.

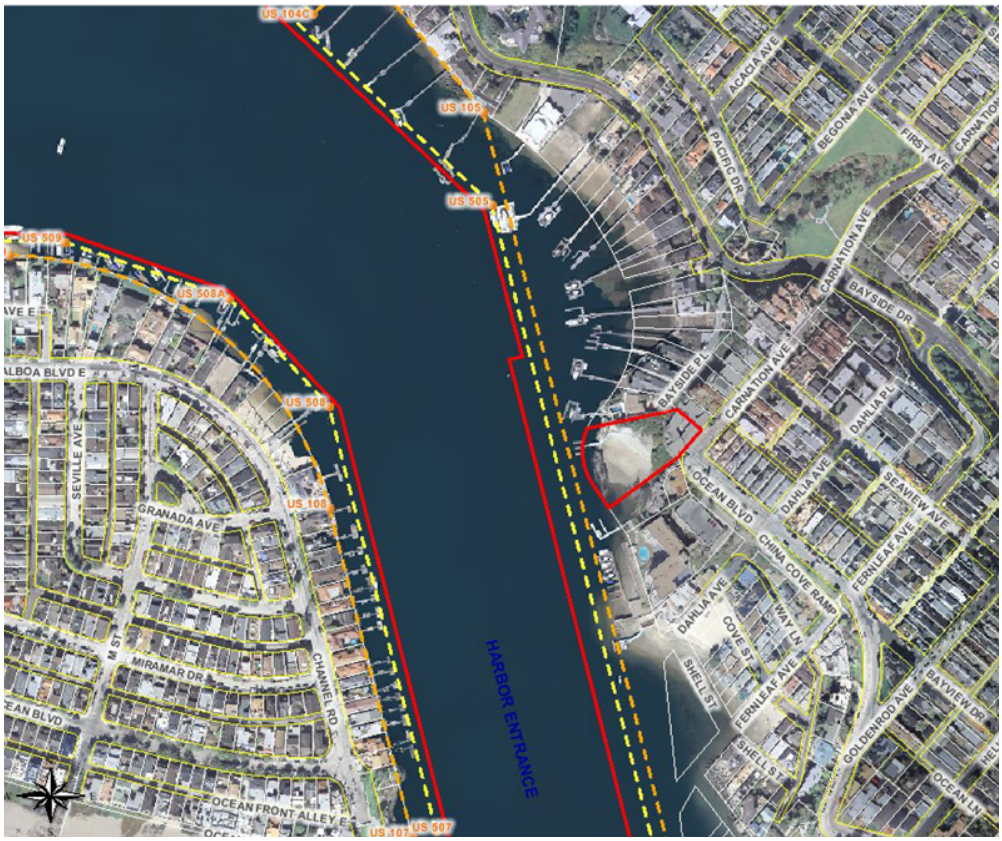
5. The design of the proposed docks and their berthed vessels would retain continued direct public-waters access and views to the existing beach by small beachable vessels (kayaks,etc.) and retain shallow water access and views to the bluff and the distinctive rock formation through an 88' wide channel to the north of the docks and an 80' wide channel to the south , both opening up to wider water areas and views as these areas are entered on passed by vessels. These design elements appear to comply with the Draft EIR and with City, State and Federal laws and requirements, as well as the spirit of community interests in preserving public access to and use of this water area, its beach and its views to the rock formation.

Summary Conclusion:

Based upon the field survey and analysis effort and its findings stated above, it is the unanimous opinion of the Harbor Commission Aerie Docks Survey Subcommittee that the proposed Aerie Docks project appears to comply with all City, State and Federal requirements as designed and, if constructed and operated as proposed and required, would NOT "…create any significant negative impact on navigation and recreational boating in the harbor" as stated in the previous Harbor Commission advisory motion.

Subcommittee Cautionary Note:

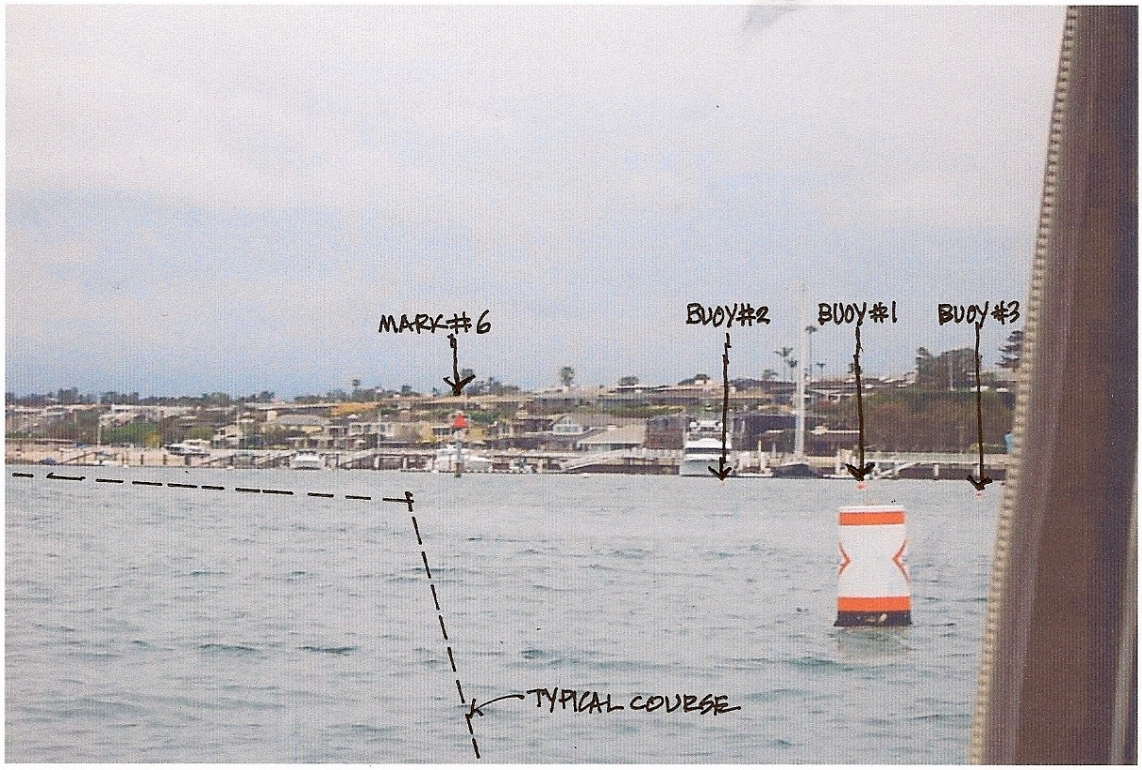
The preliminary layout and design of the proposed dock system and its structural pilings appears to comply with accepted professional marine engineering practice and the recommendations of the various technical studies for a project of this type on this site. The project has accordingly received preliminary City Approval in Concept (with a number of conditions). The owner, through acceptance of these conditions, must acknowledge and assume the risk that the Newport Beach entry channel and thus docks and vessels on this site are potentially subject to potentially severe wave conditions in extreme weather events which may exceed even the storm-resistant design parameters of the docks. The owner/developer has agreed to certain operational and management procedures for the proposed docks and berthed vessels including warnings to and required vessel relocation by the vessel owners, and other procedures, in case of an impending severe storm event. This Harbor Commission Subcommittee remains concerned that these requirements are sustained in place and continuously documented/updated subsequent to any construction of this project, and that the owner/operator properly insures, maintains and operates this project in compliance with the continuing requirements attached to its Approval in Concept. Future Harbor Commissions, Harbor Resources and City staffs should track this.



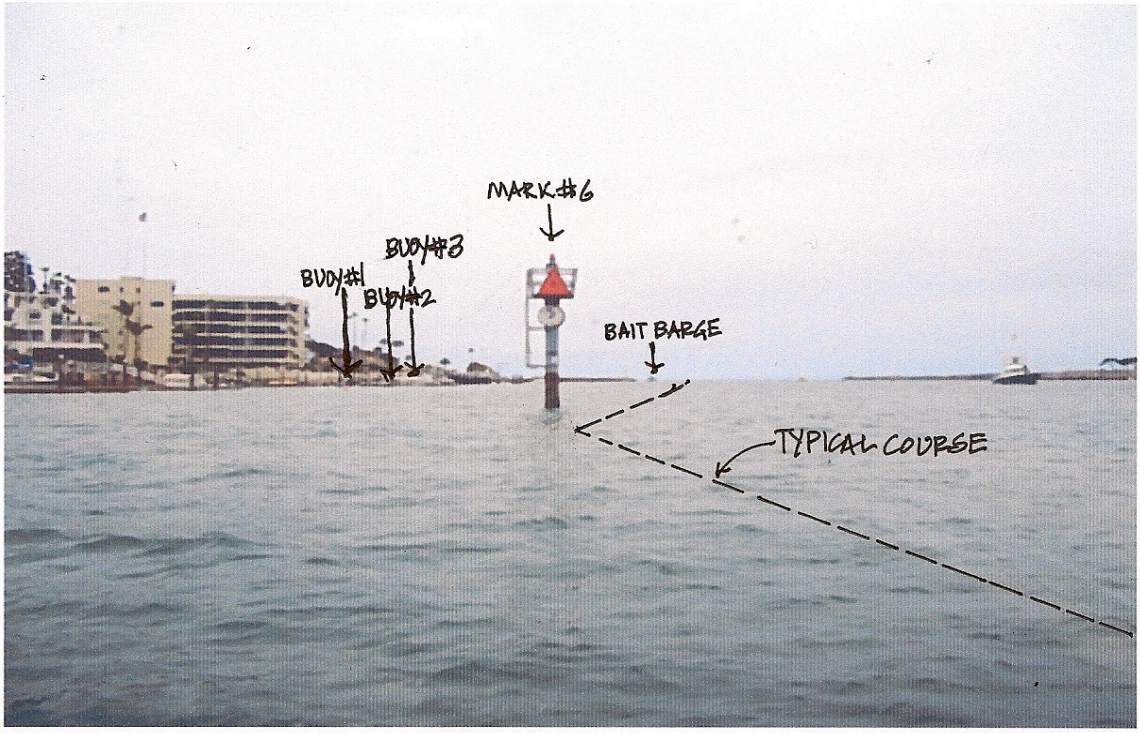
Aerie Docks Relationship to Navigation Channel & Harbor Lines

Aerie Docks Engineering Layout, Depths, Eel Grass, Harbor Lines


Buoy #3
Buoy #2
Buoy #1

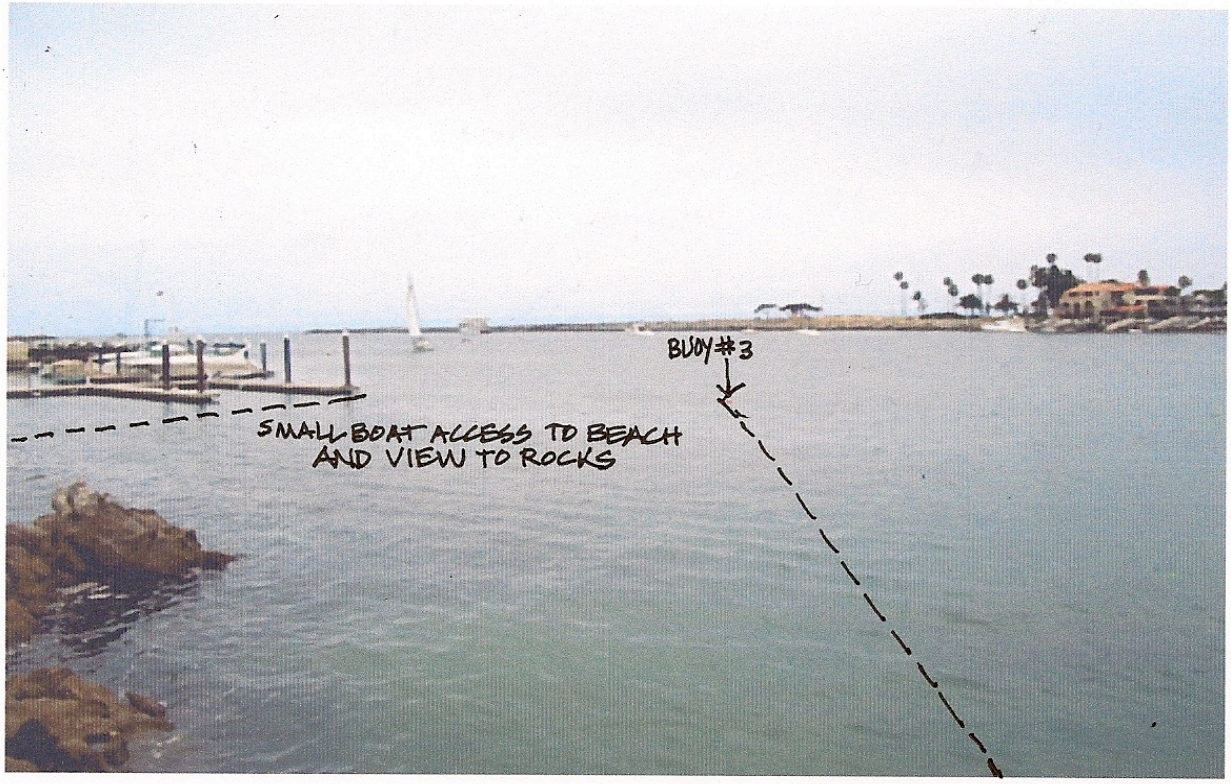


Inbound Course View at Shoal Buoy- Buoy #1 Above Shoal Buoy,#2 to left, #3 right



View on Reciprocal of Project Line Inbound Course, Buoys #1,2,3 to Left of Mark 6

Buoys #1 & # 2 and Existing Docks , View From Pier End



Buoy #3 and Adjacent Docks, View From Pier End

CITY OF NEWPORT BEACH
HARBOR COMMISSION STAFF REPORT

Agenda Item No. 1
September 16, 2009

TO: HARBOR COMMISSION

FROM: Harbor Resources Division
Chris Miller, Harbor Resources Manager
(949) 644-3043, cmiller@newportbeachca.gov

SUBJECT: AERIE Dock Structure at 201-207 Carnation Avenue – Continue Item

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ISSUE

The AERIE applicant has requested that the Harbor Permit / Approval in Concept appeal be continued to the date certain Harbor Commission meeting on October 14, 2009.

RECOMMENDATION

The Harbor Commission may:

1. Continue the AERIE appeal to the October 14, 2009 Harbor Commission meeting.

DISCUSSION

The AERIE applicant has requested that the appeal which was brought forth by an opponent to the project, be continued until the October 14, 2009 regular Harbor Commission meeting date. The applicant's reason is because two Commissioners will be absent from the September 16 meeting. All Commissioners are expected to be present in October.

PUBLIC NOTICE

This meeting has been publicly noticed via a mailer (to the residents and occupants within a 310' radius of the project) along with a jobsite posting on August 27, 2009. It was also posted on the City's website on September 11, 2009.

This agenda item has been noticed according to the Ralph M Brown Act (72 hours in advance of the public meetings at which the Harbor Commission considers the item). It was also posted on the City's website.

ENVIRONMENTAL REVIEW

The Harbor Commission's approval to continue the item does not require environmental review.

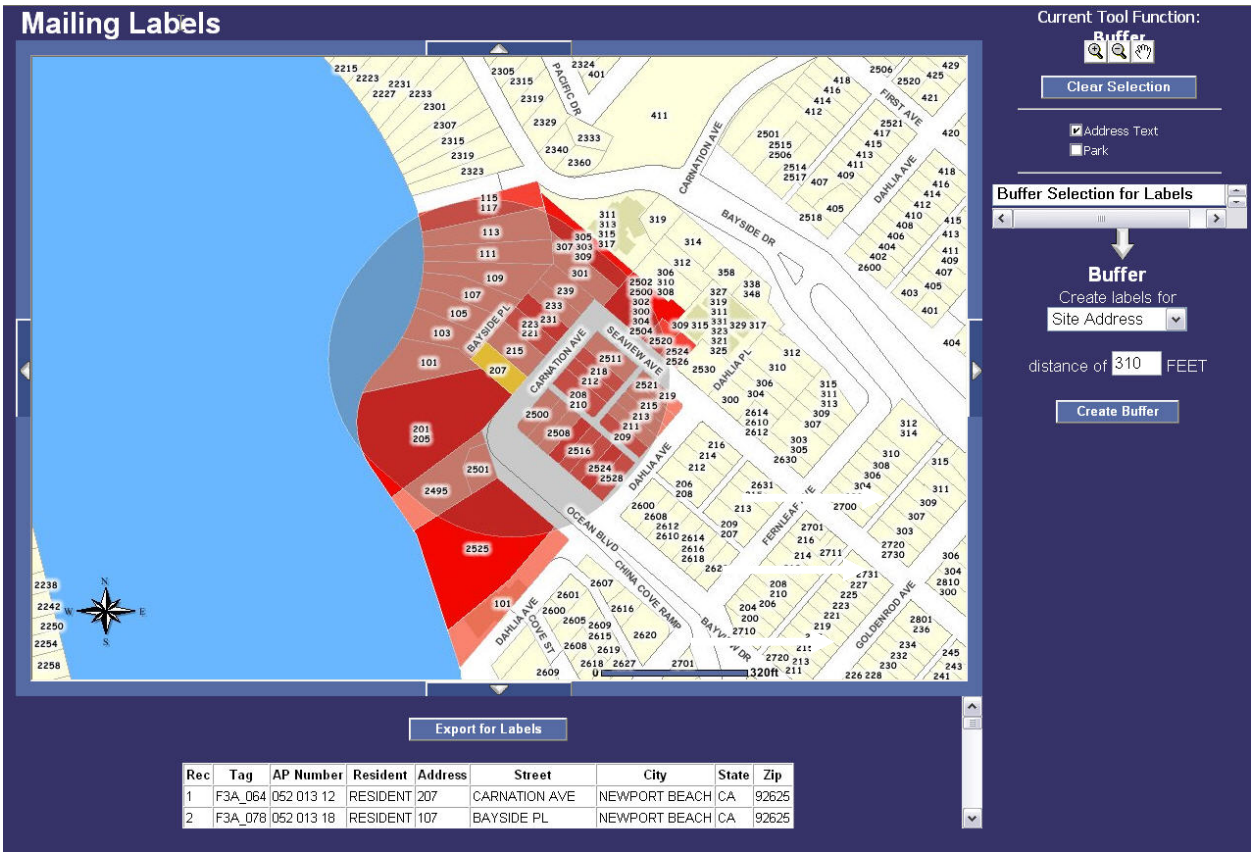
Prepared by:

_____
Chris Miller
Harbor Resources Manager

Attachments: Exhibit 1: Public Notice

Exhibit 1
Public Notice

Public Outreach 310' Radius from Project



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CITY OF NEWPORT BEACH

HARBOR RESOURCES

PUBLIC NOTICE

201 - 207 Carnation Avenue
Dock Replacement Project

The project applicant at 201 – 207 Carnation Avenue (AERIE) is proposing a project which includes replacement of an existing two slip dock system capable of berthing four vessels, with a system capable of berthing up to nine vessels. In addition, the upland property will be rebuilt with 8 condominiums.

The Harbor Commission previously considered this project on July 8, 2009 and the City Council subsequently approved the project on July 14. Harbor Resources then issued an Approval in Concept / Harbor Permit on July 31.

On August 13, there was a request to appeal the Harbor Permit to the Harbor Commission. Therefore, the Harbor Commission will hear this matter on:

Wednesday, September 16, 2009
6:00 PM
City Hall Council Chambers
3300 Newport Boulevard

The Harbor Commission agenda and staff report will be available online by September 11, 2009 at http://www.newportbeachca.gov/index.aspx?page=963

Chris Miller, Harbor Resources Manager
cmiller@newportbeachca.gov
August 27, 2009

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